



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: OPR, OPB, MNR, MNDC, MNSD, MND, FF

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- A monetary order for rent for January 2008, loss of income for February 2008, repairs, cleaning, towing and storage of a vehicle and other expenses related to restoring the rental unit to a condition that it could be re rented, pursuant to Section 67;
- An order to retain the security deposit plus interest pursuant to Section 38;
- An order to recover the filing fee pursuant to Section 72.

The landlord stated that the notice of hearing dated January 07, 2009, was served on the tenant on January 10, 2009, by registered mail. The tenant had moved out on or before January 08, 2008 without providing the landlord with a forwarding address. The landlord stated that the landlord did an online search for the tenant's current address and was able to find an address and phone number for the tenant. The landlord confirmed that this was the current address of the tenant by calling the tenant and listening to the voice mail message. The landlord tracked the registered package sent to the tenant and was advised by staff at the post office that the tenant claimed the package at the post office, by showing identification, took a look at the contents of the package and then refused to accept the package. The package was returned to the landlord and it was evident that the package had been opened. I am satisfied that the tenant was adequately served the notice of hearing and despite having been served the notice of hearing, the tenant did not show up for the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

The landlord had applied for an order of possession, but withdrew this portion of the application as the tenant was no longer in occupation of the suite.

Issues to be decided

- The tenant moved out on or before January 08, 2008 and stopped payment on the rent cheque for January. Is the landlord entitled to a monetary order for rent and loss of income for the months of January and February 2008, for towing and storing the tenant's vehicle and for other related costs to repair and to clean the rental unit?
- Has the landlord met the landlord's burden of proof that loss was incurred due to the tenant's violation of the Act or tenancy agreement?
- Is the landlord entitled to retain the security deposit in satisfaction of this claim?
- Is the landlord entitled to the recovery of the fee to file this application?

Background and Evidence

The landlord testified that the tenancy started on November 01, 2007 for a fixed term of one year. Prior to moving in, the tenant paid a security deposit of \$925.00. The monthly rent was set at \$1850.00 due in advance on the fifth day of each month. The landlord resides in the Province of Alberta and stated that during the Christmas week in 2007, the landlord received a call from a neighbour advising the landlord that the police had visited the rental unit. The landlord left a message for the tenant who returned the call on January 08, 2008 to advise the landlord that the tenant had moved out of the rental unit due to personal problems and that the tenant had stopped payment on the rent cheque for January 2008. The landlord made several unsuccessful attempts to call the tenant including at the tenant's place of work to discuss the terms of the end of the tenancy. The landlord stated that the landlord went on vacation during the latter half of January 2008 and started cleaning and repairing the unit on or about February 15, 2008. The landlord also advertised the availability of the unit on February 07, 2008. The landlord stated that the tenant left behind a vehicle which was towed to storage on February 06 2008. The vehicle was sold on October 08, 2008 for \$500.00.

Prior to selling the vehicle, the landlord advertised the notice of seizure in the local paper on April 11, 2008 allowing the tenant a period of 30 days to claim the vehicle. The landlord is claiming costs for towing, storage and advertising of the vehicle.

An addendum to the tenancy agreement contains a clause that requires the tenant to pay for city and other utilities and the landlord has submitted evidence of the outstanding utilities owed by the tenant. The landlord has also submitted receipts and photographs that depict the condition of the unit as left by the tenants.

The landlord is making the following claim:

1.	Rent for January	\$1,850.00
2.	Loss of income for February	\$1,850.00
3.	Re keying of locks	\$101.32
4.	Advertising	\$33.36
5.	Towing vehicle to storage	\$140.56
6.	Meals on February 14, 15, 16, 17	\$57.75
7.	Car wash, washer fluid and fuel on February 14, 15 and 18	\$144.42
8.	Shovel driveway	\$15.00
9.	Carpet cleaning	\$240.00
10.	Removal of garbage	\$3.00
11.	Floor cleaner	\$20.14
12.	Cleaning by landlord - 40 hours	\$600.00
13.	Dumping garbage	\$106.00
14.	Utilities	\$241.47
15.	Blinds	\$1,844.85
16.	Repair work - 12 hours	\$420.00
17.	Advertising notice of seizure of truck	\$24.70
18.	Notary for truck	\$20.00
19.	Tow truck to dealership	\$71.82
20.	Storage of truck for February to October 2008	450.00
21.	Filing fee	\$100.00
	Total	\$8334.39

Analysis

It is important for the claimant to know that to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

- Proof that the damage or loss exists,
- Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the Tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlord's claim for some of the above items meets all the components of the above test. However, the following items do not meet all the elements of the above test:

Loss of income for February: I find that the landlord was advised by the tenant on January 08, 2009 that the tenant had already moved out but did not advertise the availability of the suite until February 07, 2009 and started the clean up work on February 15, 2009.

Therefore I find that the landlord did not make adequate attempts to mitigate the landlord's losses and pursuant to Section 7(2) of the *Residential Tenancy Act*, I find that the landlord is not entitled to loss of income for February 2009 in the amount of \$1,850.00.

Meals and Travel: The landlord chose to operate the landlord's rental business from a distance, in a neighboring Province and hence I find that the tenant is not responsible for the cost of travel (\$144.42) or meals (\$57.75) associated with the landlord's travel to conduct business, in the total amount of \$202.17.

Blinds: The landlord stated that the rental home is 15 years old and when the landlord purchased the home in 1999, the blinds were approximately two years old. Based on the landlord's testimony, the approximate age of the blinds would be 12 years old. Section 37 of the *Residential Tenancy Policy Guideline* states that the useful life of drapes and blinds is 10 years. Accordingly, the window coverings would have lived out their useful life after 10 years and would be of little to no value at the end of the tenancy at which time the age of the blinds would be 12 years. Therefore, the landlord is not entitled to the cost of new blinds in the amount of \$1,844.85.

Storage of vehicle from February 08 to October 08, 2008: The landlord towed the truck away to storage on February 06, 2008 and advertised the notice of seizure on April 11, 2008 giving the tenant a period of 30 days to claim the vehicle. Hence after May 10, 2008, when the vehicle was not claimed by the tenant, the landlord had the opportunity to dispose of the vehicle and mitigate the losses that the landlord incurred by storing the vehicle until October 08, 2008. Pursuant to Section 25 and Section 27 of the *Residential Tenancy Regulations*, the landlord must store the tenant's personal property for a period of not less than 60 days following the date of removal and give at least 30 days notice of disposition to the tenant by publishing the notice in a newspaper. The landlord was compliant with the above sections, but failed to mitigate the landlord's losses by choosing to retain the vehicle for an additional six months in storage. Accordingly, I find that the landlord is entitled to four months of storage in the amount of \$200.00.

Based on the undisputed sworn testimony of the landlord I find that the landlord has established a claim for damages in the amount of \$4187.37, which is the amount the landlord is seeking on the application minus the above items and includes the filing fee.

I order that the landlord retain the security deposit and interest of \$941.66 plus the proceeds from the sale of the tenant's vehicle in the amount of \$500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$2745.71. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$2745.71**

Dated March 09, 2009.

Dispute Resolution Officer