



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the landlord OPC OPB MND MNSD MNDC FF
For the tenant CNC MNDC FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession for Cause and a breach of the tenancy agreement, for damage to the unit, for damage and loss in the amount of \$274.40, and to keep the security deposit in partial satisfaction of the monetary claim, and to recover the cost of the filing fee from the Tenant.

The Tenant filed seeking to cancel a notice for Cause, and a monetary order in the amount of \$600 for damage and loss, and to recover the cost of the filing fee from the Landlord.

Both parties attended and were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

At the outset of the tenancy the tenant advised the hearing that she has secured alternate accommodations and is vacating on November 30, 2010, and therefore does not dispute the landlord's Notice to End. As a result, the tenant's application to cancel the Notice to End is preliminarily **dismissed** without leave to reapply. The landlord confirmed his application/ request for an Order of Possession. The hearing proceeded on the merits of the applicant's respective monetary claims.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?
Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amount claimed?

Background and Evidence

The tenant's total claim is for \$600. The tenant claims the landlord damaged some of her belongings which the tenant identified as a broken lawnmower handle, a paper shredder and some broken crystal – upon all of which the tenant could not place a monetary value, or an itemized monetary value. The tenant also sought upcoming moving expenses and either the last 3 month's rent or the last month's rent and the security deposit of \$275.

The Landlord testified that he attempted to remove a reportedly decaying shed (6 x 6) from the property before pending poor weather. One of his labourers was intimidated by the tenant's son and son's acquaintance who were subsequently identified to the landlord and his labourer as having some criminal history and that it was not prudent to engage them in any way and that they could call police: "if you have problems with them in the future, phone us and we'll arrest them long enough for you to do your work". The landlord determined it was not safe for him and his help to do the work and determined to hire a backhoe contractor and a dump truck to remove the shed and has submitted invoice for the work to remove the shed in the amount of \$274.40. The landlord did not testify to any damage by the tenant, and his claim for the security deposit is premature as the tenancy has not yet ended.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss. The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Tenant's Application

The tenant has not met their burden by providing the required sufficient evidence upon which they base their claim. Therefore, I dismiss the tenant's application for damage and loss and effectively **dismiss** their application in its entirety without leave to reapply.

Landlord's Application

The landlord's claim is based upon their perception that they could not safely accomplish a quantum of work without incurring the claimed expense. The landlord has not proven how the tenant did not comply with this Act, the Regulations or their tenancy agreement thus incurring the purported loss claimed. That being said, the landlord would none the less, be responsible to do whatever was reasonable to minimize the loss. I note that the landlord had available to them the aid of Police to enable them to carry out the required work of removing the shed, thus mitigating any cost to them. The landlord determined to do the work in a manner which incurred a cost to them. Therefore, I find the landlord has not met the test for damage and loss and I **dismiss** their claim in the amount of \$274.40, without leave to reapply. As the landlord's claims for damage and for the security deposit are premature, I **dismiss** these portions of their application.

As I have dismissed the tenant's application to cancel the landlord's Notice to End, the landlord is entitled to an Order of Possession with an effective date as per the Notice to End of **November 30, 2010**.

Conclusion

I grant the Landlord is an Order of Possession **effective November 30, 2010**. This order must be served on the tenant and if necessary may be filed in the Supreme Court and enforced as an order of that Court.

The monetary claims of both parties are **dismissed**, with or without leave to reapply, as stated in the analysis.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.