



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: *OPR, OPC, CNR, MNR, CNC, OLC, PSF LRE, AAT, RR, FF*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to notices to end tenancy for non payment of rent and for cause. The landlord also applied for a monetary order for unpaid utilities, the cost of repairs and to retain the security deposit in partial satisfaction of her claim.

The tenant applied for an order to cancel the notices to end tenancy and for an order seeking landlord's action to comply with the *Act*, provide services, allow access to the unit for the tenant and his guests, and allow a reduced rent for services not provided. The tenant also applied for a monetary order for compensation for the losses he suffered due to having to move prior to the date that he had planned to move. Both parties applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, the tenant informed me that he was going to move out on November 30, 2010. An order of possession will be granted to the landlord for this date. Since the tenancy is ending, the only relevant issues are the monetary claims of both parties. Therefore, this hearing only dealt with the monetary claim of the landlord for unpaid utilities, the cost of repairs and to retain the security deposit and the monetary claim of the tenant for compensation.

The landlord stated that on November 18, 2010, she personally delivered to the tenant, copies of the evidence that she intended to rely upon during the hearing.

The tenant stated that he had not received the evidence. Upon discussing the details of the service, I prefer the testimony of the landlord regarding service of the evidence package. Therefore, I consider the tenant served with the landlord's evidence.

Issues to be decided

Are the parties entitled to their monetary claims against each?

Background and Evidence

The tenancy started on August 15, 2009 for a fixed term of one year. At the end of the fixed term the tenancy continued on a month to month basis. Rent is \$1,400.00, due on the first day of each month and does not include utilities. The rental unit is located on the main floor of the house. The landlord lives in the suite below.

Landlord's claim:

The landlord is claiming the following:

1.	Utilities for October	\$211.00
2.	Utilities for February	\$76.70
3.	Repair to faucet	\$156.30
4.	Repair to ceiling and carpet from flooding	\$2,350.72
5.	Damage to plants	\$117.60
6.	HDTV Receiver	\$38.00
7.	Heating Expert Report	\$168.00
8.	TV technician	\$175.00
9.	Lawyer	\$1,000.00
10.	Filing fee	\$50.00
	Total	\$4,343.32

The landlord stated that the tenant owed for utilities for October and filed evidence to support her claim. The tenant did not dispute the claim. The landlord also filed evidence to show that the tenant's cheque for \$76.70 for the payment of February's utilities was returned for insufficient funds.

The landlord stated that the kitchen faucet was installed just prior to the start of the tenancy and had to be replaced after the tenant reported it broken. The landlord filed evidence to support her claim of \$156.30.

The landlord also provided detailed evidence of the cost she incurred to repair the ceiling and replace the carpet due to flooding from the tenant's washroom, in September and October. Both times, the flooding occurred during the time the tenant's bath tub was in use. The carpet that had to be replaced as a result of the water damage, was two years old.

The landlord also filed photographs to show that some outdoor plants were damaged and she incurred a cost of \$117.60 to replace them. The landlord did not file any invoices to support this claim. The tenant agreed to the cost of renting the HDTV receiver in the amount of \$23.00 as per the tenancy agreement.

The landlord stated that to defend herself from being accused of turning off the heat and cable services to the rental unit, she hired inspectors to provide reports regarding the location of the controls to these services. The reports indicate that the controls are in the upstairs suite that is occupied by the tenant. The landlord is claiming the cost of these services in the amounts of \$168.00 and \$175.00. The landlord is also claiming \$1,000.00 for the cost of a lawyer and the filing fee of \$50.00

Tenant's claim:

1.	Loss from sale of furniture	\$5,000.00
2.	Loss from sale of vehicle	\$3,000.00
3.	Loss from neglect of business	\$3,000.00
4.	Hotel stay	\$800.00
5.	Moving/shipping costs	\$2,000.00
6.	Compensation for loss of quiet enjoyment	\$10,000.00
7.	Return of rent	\$150.00
	Total	\$23,950.00

The tenant stated that he had intended to move to Europe in February 2011 but due to the harassment from the landlord, he changed his plans and decided to move out by November 30, 2010. He stated that because of the change of the moving date, he was forced to sell his belongings in a hurry and therefore was not able to get full value. The tenant is claiming \$8,000.00 for the loss he suffered from the rushed sale of his furniture and his vehicle at under value prices.

The tenant also stated that due to the harassment his family endured, he was unable to conduct his business and therefore suffered a loss of \$3,000.00. He also had to move his family to a hotel for a few days and is claiming \$800.00 for the cost his hotel stay. The tenant is also claiming \$2,000.00 for the cost of shipping his belongings and \$10,000.00 for the loss of quiet enjoyment. The tenant was claiming the return of prorated rent, but has withdrawn this claim as he will be moving on November 30, 2010.

The tenant has not filed any documentary evidence to support his claim for the losses he suffered or to support his claim for compensation for the loss of quiet enjoyment.

Analysis

Landlord's claim:

The tenant agreed that he owed \$211.00 for utilities for October and the landlord has filed evidence to support her claim of \$76.70 for the cost of utilities for February 2010. Therefore I find that the landlord is entitled her claim for utilities.

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the faucet and carpet. As per this policy, the useful life of a faucet is 15 years and the useful life of carpet is ten years. Both the faucet and carpet are two years old. Therefore the faucet had 13 years of useful life left and the carpet had eight years of useful life left.

Accordingly, I find that the landlord is entitled to \$135.46 for the replacement of the faucet and \$826.72 for the carpet which is the prorated value of the remainder of the useful life of these items.

The landlord has applied for the cost of replacing the carpet twice within a period of two months. I find that the landlord is entitled to the cost of one replacement as the landlord could have found other remedies to dry the newly replaced carpet after the second incident of flooding. The landlord is entitled to the repair of the ceiling in the amount of \$284.48.

The landlord has not provided sufficient evidence to support her claim for the replacement of the plants that she states were trampled upon by the tenant. Therefore her claim for \$117.60 is dismissed.

The tenant has agreed to pay \$23.00 towards the HDTV receiver. I find that the landlord is not entitled to the cost of reports as she ordered them of her own free will.

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the landlord's claim for lawyer's fees is dismissed.

The landlord has proven a large portion of her case and is therefore entitled to the recovery of the filing fee.

Overall, I find that the landlord has established a claim as follows:

1.	Utilities for October	\$211.00
2.	Utilities for February	\$76.70
3.	Repair to faucet	\$135.46
4.	Repair to ceiling and carpet from flooding	\$1,111.20
5.	Damage to plants	\$0.0
6.	HDTV Receiver	\$23.00
7.	Heating Expert Report	\$0.0
8.	TV technician	\$0.0
9.	Lawyer	\$0.0
10.	Filing fee	\$50.00
	Total	\$1,607.36

Tenant's claim:

The tenant has not filed any evidence to support his claim that he incurred a loss from the sale of his personal items and from neglect of his business due to harassment by the landlord. Therefore the tenant's claim for losses incurred to sell his furniture and vehicle and loss of income is dismissed.

The tenant states that he had to move to a hotel for three days due to the harassing behavior of the landlord.

The tenant filed two receipts for hotel stays in two different cities for the dates of October 27 to October 29. Except for those dates, the tenant has resided in the rental unit during the tenancy. The tenant stated that the landlord would knock on his door and yell at him and his family, causing his family to be afraid of the landlord. The landlord denied these allegations. Without any evidence to support the tenant's allegations of harassing behavior on the part of the landlord, I dismiss the tenant's claim for \$800.00 for his hotel stay.

The tenant is also claiming moving and shipping costs. He has not yet incurred these costs and has not provided any evidence to support his claim. Therefore the tenant's claim for \$2,000.00 is dismissed.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

In most respects there is vast contrast in the tenant and landlord's testimony and the relationship has progressively deteriorated over the term of the tenancy making resolution of issues, at best, frustrating for both parties. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim.

When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. Based on the testimony of both parties I find that the tenant has not proven any harassing behavior on the part of the landlord.

Accordingly, I find that the tenant has not proven his claim for compensation for the loss of quiet enjoyment and therefore his claim for a monetary order in the amount of \$10,000 is dismissed. The tenant must also bear the cost of filing this application.

Overall, I find that the landlord has established a claim of \$1,607.36. I order that the landlord retain the security deposit of \$700.00 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 \$907.36. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective on or before 1:00 p.m. on November 30, 2010. I also grant the landlord a monetary order in the amount of **\$907.36.**

The tenant's application is dismissed in its entirety.

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*.

Dated: November 26, 2010.

Dispute Resolution Officer