



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNR, MNDC, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of repair to the rental unit, bailiff services, unpaid rent and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a monetary claim and if so in what amount? Is the landlord entitled to recover the filing fee?

Background and Evidence

The tenancy started in March 2010. The parties had filed applications for dispute resolution in September 2010 and in a decision dated September 10, 2010, the landlord was granted an order of possession. The landlord stated that he did not enforce the order immediately in order to help the tenant who some health issues. The tenancy continued and the landlord received monthly rent payments from the Ministry of Employment and Income Assistance in the amount of \$700.00. The landlord stated that the rent was \$3,000.00 per month while the tenant stated that it was \$1,800.00 per month and included utilities. The tenant also stated that his utilities were cut off in June 2010 and he was forced to pay them for the balance of the tenancy.

In support of his testimony regarding the amount of rent, the landlord filed a letter dated May 12, 2011, which contains a financial statement showing that the monthly rent was \$3,000.00 starting December 2010 and that the tenant had paid only \$700.00 each month for the period of December 2010 to April 2011. This statement shows that the tenant owed a total of \$14,500.00 in unpaid rent.

This letter states that even though the landlord had an order of possession, he did not evict the tenant in the hope of achieving an amicable solution to the issue of unpaid rent. The letter also states that the tenant's business partner would be sending funds to the tenant's account and upon receipt of the funds; the tenant would pay the landlord \$15,000.00. The letter goes on to say that the landlord has considered the health problems of the tenant's wife and has stayed the eviction process. The landlord stated that by signing this letter, the tenant agreed to pay \$3,000.00 in rent per month.

The landlord referred to this letter as a “tenancy agreement”. The tenant stated that he was in such a desperate situation that he agreed to sign this letter to avoid being evicted. He stated that he never received any funds from his business partner and therefore ended up on welfare, when he was unable to pay rent. On May 31, 2011, the tenant was physically removed by a bailiff. He moved into the guest suite located in the apartment building and then into a homeless shelter until he found a place to go to.

The tenant referred to the prior hearing in which the rental amount was determined to be \$1,800.00 per month. The landlord agreed that the tenancy started with an agreement that the tenant pay \$5,400.00 for the first three months and after having received an order of possession, he allowed the tenant to continue to stay on condition he paid the new monthly rent of \$3,000.00. The tenant pointed out that the welfare cheques for rent continued on and the landlord received one on May 16 which covered rent for June. The landlord agreed that he had received this cheque and made a mistake by not including this amount in his financial statement. Rent cheques from the Ministry of Employment and Income Assistance are issued prior to the start of the month. Therefore the landlord received a total of seven cheques of \$700.00 each for the period of December 2010 to the end of tenancy.

The landlord has also claimed the cost of enforcing the order of possession through the Supreme Court of Canada and the cost of using the services of a bailiff.

The landlord filed an itemised list of damage to the rental unit and is claiming the cost of repairs. The landlord also filed another list containing four items which was signed off by the tenant on March 13, 2011. The tenant stated that he signed the list because he was being threatened with eviction if he did not sign. The tenant agreed to having made holes in the wall but stated he would cover the cost once he was served with an invoice. The landlord has not filed any invoices, photographs or other documents to support his monetary claim for repairs.

The landlord is claiming the following:

1.	Unpaid rent	\$14,500.00
2.	Supreme Court filing fee	\$100.00
3.	Residential Tenancy filing fee	\$100.00
4.	Accurate Court Bailiffs	\$2,660.03
5.	Supreme Court Writ Fee	\$80.00
6.	Damage to Condo	\$2000.00
7.	Damage to Condo (estimated)	\$4,000.00
	Total	\$23,440.03

Analysis

Unpaid rent - \$14,500.00

The landlord agreed that the tenancy started with rent set at \$1,800.00 per month. The landlord stated that in December 2010, he did not enforce the order of possession that had been granted to him, but instead allowed the tenancy to continue at an increased rent of \$3,000.00 per month.

Despite the landlord's testimony that by signing the financial statement, the tenant agreed to pay \$3,000.00 per month, I find that raising the rent in order to forestall an eviction is far beyond what might be considered reasonable. In addition, the letter was signed on May 12, 2011, with an effective date of December 2010, for the rent increase.

If the landlord wanted to impose a rent increase, he needed to fulfill the requirements set by legislation that require him to serve the tenant with a three month notice to increase rent, which would come into effect after one year of tenancy. In this case, the landlord notified the tenant by way of this letter dated May 12, 2011 of a rent increase that came into effect six months prior to the date of the letter and nine months after the start of the tenancy. For the above reasons I find that the rent increase is not enforceable.

Based on the testimony of both parties and a decision dated September 10, 2010, of a prior dispute, referred to by the tenant, I find that the rental amount was \$1,800.00 per month and that the monthly rent payable for the period of December 2010 to May 2011 is the same.

The landlord received seven payments of \$700.00 each from Ministry of Employment and Income Assistance, for the period of December 2010 to the end of tenancy on May 31, 2011. The total rent due for this period is \$10,800.00. Since the landlord has already received \$4,900.00, I find that the tenant must pay the balance of rent owed in the amount of \$5,900.00.

Filing fees and Bailiff's fees

I find that the landlord did not enforce the order for possession granted to him in September 2010, but instead acted, contrary to the order, to confirm and reinstate the tenancy. He is therefore estopped, or precluded from relying on his order for possession. I find that because the landlord failed to act on the order for possession, the order is no longer enforceable.

Eight months later, the landlord decided to enforce this order using the services of a bailiff. The tenant was physically evicted on May 31, 2011. The tenant had the opportunity to inform the bailiff that the tenancy was reinstated by the landlord and that the order of possession was no longer enforceable, but failed to do so.

Since the landlord enforced the order of possession after reinstating the tenancy, he enforced an invalid order of possession and must therefore bear the cost of filing the order in the Supreme Court of Canada and the cost of the services of the bailiff.

Since the landlord has established a claim in excess of \$5,000.00, he is entitled to the recovery of the filing fee of \$100.00 that he paid at the Residential Tenancy Branch.

Damage to the unit – total \$6,000.00

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

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

The claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

The landlord did not file any evidence by way of photographs or invoices to support his claim. He stated that the list of damages signed by the tenant was evidence enough to prove that the tenant had caused the damage. Even if I accept that all the damage as alleged by the landlord, was caused by the tenant, the landlord has not filed any verification of the actual amount that was required to rectify the damage.

In the absence of this evidence, I find that the landlord's claim has not satisfied every component of the above test and therefore his claim for repairs is dismissed.

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

1.	Unpaid rent	\$5,900.00
2.	Supreme Court filing fee	\$0.00
3.	Residential Tenancy filing fee	\$100.00
4.	Accurate Court Bailiffs	\$0.00
5.	Supreme Court Writ Fee	\$0.00
6.	Damage to Condo	\$0.00
7.	Damage to Condo (estimated)	\$0.00
	Total	\$6,000.00

Overall the landlord has established a claim of \$6,000.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. 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 \$6,000.00

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: July 18, 2011.

Residential Tenancy Branch