



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, OPB, MND, MNR, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for unpaid rent, for cause, and for a breach of an agreement with the landlord. The landlord also seeks a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

At the outset of the hearing the landlord advised that a previous hearing was held after the tenant had filed an application to cancel the Notices to End Tenancy. At that hearing the landlord successfully gained an Order of Possession which she will be serving upon the tenant. Therefore, the landlord withdraws the applications for an Order of Possession.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

Background and Evidence

The landlord testifies that this month to month tenancy started on October 01, 2011 as per the tenancy agreement provided in evidence. Rent for this unit is \$1,200.00 per month and is due on the first day of each month. The landlord states the tenant only wanted to pay \$1,000.00 per month for this unit so the landlord and tenant agreed the tenant would be responsible for the yard maintenance and would receive the sum of \$200.00 back each month for this work. The landlord testifies that the tenant did not carry out any yard maintenance in October, which the landlord states was necessary to prepare the yard for the winter months. The landlord states in light of this the tenant did not receive the \$200.00 from her rent.

The landlord testifies that the tenant failed to pay all the rent owed for October, November and December, 2011 leaving an unpaid balance of \$550.00 for October; \$500.00 for November and \$200.00 for December. The landlord testifies that the tenant also failed to pay rent of \$1,200.00 for January, 2012. The landlord seeks a Monetary Order to recover the unpaid rent to the total sum of \$2,450.00.

The landlord testifies the tenant used to live in the basement unit and requested to move into the upper unit. The landlord testifies that the septic tank was cleaned out on October 31, 2011 at a cost of \$1,263.36. The landlord testifies that the new tenants who moved into the basement unit complained that their toilet was blocked so the landlord called the septic tank company again as their previous work had been guaranteed. On November 21, 2011 the septic tank was flushed through and pumped again as the water was at the top level. The technician doing this work spoke to both tenants as he found a large number of Lysol wipes in the pipes of the septic tank. The landlord

testifies that this tenant admitted that both her and her children use these wipes and flush them down the toilet.

The landlord testifies that the technician explained to the landlord that the wipes expand in the system when they are wet and had blocked the outflow pipes which take the liquids to the septic field. Because the wipes had blocked the pipes the septic tank filled up and had to be flushed and pumped to clear the blockage and the excess liquids. The landlord testifies that the tenant should have been aware that these wipes should not go in the toilet as there is a warning to that effect on the packets. The landlord has provided a copy of the technicians report detailing his findings when the system was pumped which also shows the landlord paid \$996.80 for this work.

The landlord testifies that she obtained the property in July, 2011 and had no prior knowledge of when the septic tank was last cleared prior to the landlord having it done on October 31, 2011.

The tenant testifies that she was still living in the basement unit on October 01, 2011 and therefore her rent there was only \$650.00 which she paid to the landlord. The tenant claims she moved to the upstairs unit the second week of October and had an agreement with the landlord that she would take care of the yard for a monthly reimbursement of \$200.00. The tenant states as it was October she could not do any lawn care but the landlord had still agreed that \$200.00 would be given to the tenant against her rent. The tenant testifies that she only owes the landlord three hundred dollars for November, 2011 as her rent had been agreed at \$1,000.00.

The tenant testifies that she paid \$1,000.00 in rent for December, 2011 and does not owe any further amount. The tenant agrees she failed to pay rent for January, 2011. The tenant also agrees she did not carry out any yard maintenance from October, 2011 to January, 2012.

The tenant disputes that she is responsible for the septic tank problem. The tenant testifies that she had lived in the basement unit for over three years and the septic tank had never been cleaned out until October 31, 2011. The tenant testifies she did not experience any problems with the plumbing in the years she lived in the basement unit and was not aware the house was on a septic tank. The tenant testifies that it was not until the new tenant moved into the basement unit that the toilet would not flush. When the technician had pumped the septic tank he showed both sets of tenants what he had found in the tank. The tenant testifies that it looked like rags. The tenant agrees she did use Lysol wipes and states the technician told her that she should not flush them. The tenant testifies that she has always flushed these wipes but only uses about one a day.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regards to the landlords claim for unpaid rent; I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord has provided evidence to show the amount of rent payable as agreed on the tenancy agreement. This agreement also stipulates that the tenant will receive a reimbursement of \$200.00 for yard maintenance each month. The tenant has stated that she did not carry out any yard maintenance at the rental unit.

The tenant argues that she could not do yard maintenance in the winter and the landlord had said she would still receive the reimbursement. The landlord argues that the tenant was told if she did the yard maintenance in October to prepare the yard for the winter months she would still get the \$200.00 reimbursement.

I have considered the arguments put forward by the parties and find the tenant does not dispute that she failed to carry out any yard maintenance in October. Consequently the landlord is not obligated to provide a \$200.00 rent reimbursement for the four months from October to January. The tenant also argues that she was still living in the basement unit in October, 2011 and paid her rent there. However the tenancy agreement signed by the tenant clearly states the tenancy starts on October 01, 2011 therefore this is the date the tenant is obligated to pay rent from. The landlord has therefore established her claim to recover unpaid rent for October of \$550.00, for November of \$500.00, for December of \$200.00 and for January of \$1,200.00. A Monetary Order has been issued to the landlord for the sum of **\$2,450.00** pursuant to s. 67 of the *Act*.

With regards to the landlords claim to recover the costs for the pumping of the septic system; the tenant agrees she did use Lysol wipes and agrees she did flush them down the toilet. The landlord has the burden of proof to show that the tenant acted negligently in disposing of these wipes down the toilet. It is my decision that although the tenant has stated she was not aware that this was a septic system, wipes of this nature do normally carry a warning that they should not be disposed of in a toilet. The tenant argues that she had no prior problems in disposing of the wipes this way; However, if a wipe does get caught in the system and blocks an outlet pipe for the waste water it would result in the water backing up in the tank resulting in the system having to be pump and flushed again.

While I accept this was not a deliberate act on the part of the tenant, the tenant is still responsible for any damage to a rental unit, site or property caused by the actions or neglect of the tenant and although not deliberate, the tenant should not have disposed of wipes such as these into the toilet system. Consequently, I uphold the landlords claim to recover the sum of **\$996.80** from the tenant and a Monetary Order has been issued pursuant to s. 67 of the *Act*.

As the landlord has been successful with her claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued for the following sum:

Unpaid rent	\$2,450.00
Septic system	\$996.80
Filing fee	\$50.00
Total amount due to the landlord	\$3,496.80

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,496.80**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: January 12, 2012.

Residential Tenancy Branch