



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent and for cause pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant who attended this hearing (the tenant) confirmed that the landlord handed a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) and a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the other tenant (AA) on March 7, 2012 and April 3, 2012, respectively. The tenant confirmed that the landlord handed both copies of the landlord's dispute resolution hearing package for the tenants to Tenant AA on April 13, 2012. The tenant confirmed that he has received and reviewed the landlord's dispute resolution hearing package. I am satisfied that the landlord served the above documents to the tenants in accordance with the *Act*.

At the hearing, the landlord's representative at this hearing (the landlord) referred to late submissions of evidence he faxed to the Residential Tenancy Branch on April 20, 2012, within 7 days of this hearing. One of these submissions contained 4 pages of photographs which I noted were of such poor quality that only the handwritten comments could be viewed properly. The tenant confirmed the landlord's assertion that the landlord had sent these photographs to the tenant by email in advance of the hearing. Although the tenant said that he had received the photographs, he testified that these were black and white photographs that were difficult to view on his cellphone, the only method he had to view them in advance of the hearing. I advised the parties that I would be attaching little weight to this late and unclear evidence submitted by the landlord.

The tenant testified that he vacated the rental unit on April 13, 2012, and the keys were returned to a representative of the landlord on April 25, 2012, at which time vacant possession of the rental unit was transferred to the landlord. Since the landlord already has possession of the rental unit and the tenancy has ended, the landlord withdrew his application for an end to this tenancy and an Order of Possession.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord gave undisputed oral testimony that this tenancy commenced on December 1, 2010, as an eight month fixed term tenancy to Tenant AA and two other co-tenants, who vacated the rental unit some time ago. At the expiration of the initial fixed term, the tenancy converted to a periodic tenancy. The tenant who attended this hearing testified that he moved into the rental unit in August 2011. Monthly rent by the end of this tenancy was set at \$1,450.00, payable in advance on the first of each month. The landlord continues to hold the \$725.00 security deposit he received for this tenancy on November 6, 2010.

The landlord's application for a monetary award of \$2,275.00 included the following:

Item	Amount
Unpaid April 2012 Rent	\$1,450.00
Strata Fine	100.00
Unreturned Parking Pass	100.00
Recovery of Filing Fee for this application	50.00
Total of Above Items	\$1,700.00

Since the landlord applied for a monetary award for damage and losses arising out of this tenancy prior to gaining possession of the premises, the landlord did not quantify the amount of damage he was seeking in the application for dispute resolution.

Although the landlord testified that a joint move-in condition inspection was conducted on or about December 1, 2010, and a report of that inspection was forwarded to the then tenants, the landlord did not enter this document into written evidence for this hearing. Since the landlord maintained that the tenants abandoned the rental unit, no joint move-out condition inspection was conducted. The landlord has not produced a

condition inspection report. Until this hearing, the landlord did not have a current mailing address for either tenant.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. 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.

Both parties in attendance at this hearing confirmed that the tenants have not paid any portion of their April 2012 rent. As such, I find that the landlord is entitled to a monetary award of \$1,450.00 for unpaid rent for April 2012.

The tenant did not dispute the landlord's oral and written evidence that the tenants have not paid a \$100.00 strata fine arising out of this tenancy. Although the landlord has not yet paid this fine, I accept the landlord's undisputed testimony that the landlord will be required to pay this fine shortly. I allow the landlord's application for recovery of the \$100.00 strata fine.

The tenant testified that he left the parking pass in the rental unit when he vacated the rental unit, but did not dispute the landlord's sworn testimony that this pass was not in the rental unit on April 25, 2012 when the landlord gained possession of the premises. Based on the evidence before me, I find that the landlord is entitled to recover the \$100.00 cost to be incurred to replace the missing parking pass.

Section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended. The landlord cited a number of examples of damage that exceeded "reasonable wear and tear." However, he testified that the tenants had done an acceptable job of cleaning the premises. The tenant conceded that there was some damage, including to the drywall, but described this damage as relatively minor in nature.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be

issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Although the landlord claimed to have provided a joint move-in condition inspection report to the original tenants, he did not enter a copy of this report into written evidence in support of this application. The landlord also provided no move-out condition report, and the photographs provided as late evidence were of such poor quality that I can attach little if any weight to them.

I am not satisfied that the landlord has demonstrated sufficient entitlement to a large monetary award for damage. The landlord did not provide receipts for any of the repair work done to date or that will need to be done to restore the premises to their previous condition. However, despite the deficiencies in the landlord's written evidence, the parties did agree that there has been some damage arising out of this tenancy. Under these circumstances, I allow the landlord a nominal monetary award of \$100.00 for damage arising out of this tenancy, as I find that the tenants have contravened the requirement under section 37(2) of the *Act*.

I allow the landlord to retain the \$725.00 security deposit plus applicable interest that the landlord continues to hold for this tenancy. No interest is payable over this period.

As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee for the landlord's application from the tenants.

Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover unpaid rent, losses and damage arising out of this tenancy, and the landlord's filing fee for this application and to retain the security deposit held for this tenancy:

Item	Amount
Unpaid April 2012 Rent	\$1,450.00
Strata Fine	100.00
Unreturned Parking Pass	100.00
Damage Arising from Tenancy	100.00
Less Security Deposit	-725.00
Recovery of Filing Fee for this application	50.00
Monetary Order	\$1,075.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for an end to this tenancy and an Order of Possession is withdrawn.

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: April 26, 2012

Residential Tenancy Branch