



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled for 3:00 p.m. to hear a landlord's application for a Monetary Order for unpaid and/or loss of rent for the months of July 2012 through October 2012 as well as damage to the residential property. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Procedural Matters

Some difficulty was experienced at the beginning of the hearing with respect to connecting all of the parties in the teleconference call. At approximately 3:07 p.m. all parties were connected to the teleconference call and the hearing proceeded.

I noted that the landlord had not requested an Order of Possession in filing the application. The landlord indicated this was a typographical error and requested an Order of Possession. The tenant stated that she did not object to the landlord being provided an Order of Possession as she no longer occupied the rental unit. I amended the application accordingly.

The tenant stated that she was recording the proceedings on her iphone. I informed the tenant that private audio recordings were prohibited under the Rules of Procedure. The tenant stated that I was incorrect and that under "the law" she may record the proceeding as long as she told me she was doing so. I instructed the tenant that the Rules of Procedure applied to the proceedings and to turn off the recording in order to continue with the hearing. The tenant confirmed that she had stopped recording and upon receiving her confirmation I proceeded with the dispute.

I cautioned the tenant not to interrupt the proceedings or call others names. Despite numerous warnings the tenant was extremely argumentative, antagonistic, and continuously interrupted the proceedings. I cautioned the tenant that she would be excluded from the proceeding if such behaviour continued. Finally, I was satisfied the

hearing could not proceed with the present and I asked the tenant to exit the teleconference call. The tenant hung up at approximately 3:34 p.m. and I locked the conference call.

After the tenant left the hearing the landlord requested the application be amended to authorize the landlord to retain the security deposit in partial satisfaction of the rent owed the landlord. As such an amendment reduces the Monetary Order I found it non-prejudicial to the tenant and I agreed to consider the request.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent or loss of rent for July 2012 through October 2012 and damage to the residential property?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenant moved into the rental unit in May 2012 under a fixed term tenancy set to expire April 30, 2012. A security deposit of \$432.50 was transferred from a previous tenancy agreement with the landlord. The tenant was required to pay rent and parking of \$890.00 on the 1st day of every month. It is undisputed the tenant has not paid rent since June 2012.

The landlord applied to recover unpaid and/or loss of rent for the months of July 2012 through October 2012.

The tenant stated that she moved out of the rental unit at the end of July 2012 and that one of the landlord's agents "knew" that she had. I asked her how he "knew" and she initially responded that he knew because she had not paid rent and had been disputing the landlord's attempts to collect other charges from her. She later submitted that she had a conversation with this agent on August 2, 2012 and she informed him that she was "vacating".

When I asked the tenant about return of the keys she initially stated she did not return them because she could not get in contact with the landlord. When I asked if she knew where the landlord's office was located she responded by stating that she does know where the landlord's office is located but that she kept the keys because she "chose to."

The landlord submitted that the tenant was seen moving furniture out of the unit in October 2012. Further, she has continued to access the building as recently as last week.

The landlord submitted that the tenant repeatedly vandalized the mailbox with black marker and provided a photograph of the locker. The mailbox bearing the rental unit number contains the message: "No flyers or junk mail" in black marker. The landlord is seeking \$50.00 to offset some of the costs associated to rectify the damage.

The tenant acknowledged that she did return to the property to retrieve mail after she allegedly vacated the rental unit. The tenant responded by stating that the mail "is a disaster".

Analysis

As the tenant stated she has vacated the rental unit and had no objection to the landlord obtaining an Order of Possession I order the tenancy ended effective immediately under section 44(1)(f) of the Act. I also provide the landlord an Order of Possession effective two (2) days after service upon the tenant to use in the event the tenant has not vacated the rental unit.

As the applicant, the landlord bears the burden to prove their claim. The burden of proof is based on the balance of probabilities.

I found the tenant to be less than credible given her changing testimony and irrational behaviour during the hearing. I am further satisfied that the landlord put the tenant on notice by way of this application that the landlord was seeking loss of rent up to and including October 2012 and the tenant has had every opportunity to provide corroborating evidence that she vacated the rental unit when she claims to have.

I found the landlord's testimony to be consistent and responsive to the questions asked. Thus, I accept the landlord's version of events over that of the tenant's version.

Having preferred the landlord's submissions over that of the tenant, I accept that the tenant was occupying the rental unit up to and including the month of October 2012. Therefore, I grant the landlord's request to recover unpaid and/or loss of rent from the tenant for the months of July 2012 through October 2012.

Upon review of the photographs and the undisputed testimony of the landlord I find, on the balance of probabilities, that the tenant vandalised the mailbox and I grant the landlord's reasonable request to recover \$50.00 to rectify the damage.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I further award the filing fee to the landlord.

Provided to the landlord is a Monetary Order calculated as follows:

Unpaid rent/loss of rent – July 2012 through October 2012	\$3,560.00
Damage to mailbox	50.00
Filing fee	50.00
Less: security deposit	<u>(432.50)</u>
Monetary Order	\$3,227.50

The landlord must serve the Monetary Order upon the tenant and may enforce as necessary in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The landlord has been provided an Order of Possession effective two days after service upon the tenant. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$3,227.50 to serve upon the tenant and enforce as necessary.

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 09, 2012.

Residential Tenancy Branch