



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application and other costs.

The landlord and the tenant attended the conference call hearing; both gave affirmed testimony and the landlord provided evidentiary material prior to the commencement of the hearing to the Residential Tenancy Branch and to the tenant. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

Is the landlord entitled to recover the filing fee and other costs associated with the tenancy from the tenant?

Background and Evidence

The landlord testified that this fixed term tenancy began on October 1, 2012 and was to expire on August 30, 2013 although the tenancy ultimately ended on January 4, 2013. Rent in the amount of \$1,495.00 per month was payable in advance on the 30th day of each month for the following month. The tenant failed to honour the terms of the tenancy by failing to rent the unit for the entire fixed term.

The landlord obtained a monetary order against the tenant in a previous arbitration for \$3,785.00 for rental arrears from December, 2012 to February, 2013. That amount also included \$50.00 for recovery of the filing fee, less the \$750.00 security deposit that the

landlord held in trust. A copy of the Decision was provided for this hearing. The Decision is dated February 8, 2013 and the dates of the hearing are January 16 and February 8, 2013. The Decision also states that the landlord applied to amend the application, and that was allowed. The original application had claimed unpaid rent for the months of December, 2012 and January, 2013, and the amended application added a claim for loss of rental income for February, 2013. The Decision also states that the tenant vacated the rental unit on December 31, 2012. The landlord testified that the rental unit did not re-rent until March 15, 2013 and the landlord claims half a month's rent from the tenant in the amount of \$747.50.

The landlord also claims \$47.02 for new locks stating that the tenant did not return the keys to the rental unit, and has provided a copy of a mastercard statement showing a purchase from The Home Depot in that amount. The statement does not indicate an item purchased, only the amount.

The landlord also claims \$46.45 for registered letters and stamps and has provided a number of receipts to substantiate the amount.

The landlord also claims \$218.41 for advertising the rental unit and has provided invoices from the Vancouver Sun and Glacier Media.

The landlord also claims \$570.00 for showing the rental unit to prospective tenants, trips to the RTB office, and the landlord's time for changing the locks, and has provided a typewritten explanation claiming 19 trips at \$30.00 per trip and detailing the dates that 5 notices were provided to the tenant, 10 dates of showings to prospective tenants, 3 dates of visits to the RTB office, and 1 date for changing the locks to the rental unit.

The tenant testified that on November 25, 2012 the tenant sent a notice to vacate to the landlord. The landlord denies it but referred to it in the previous hearing.

The tenant also testified that upon speaking with legal counsel the tenant learned that the landlord's application cannot be successful in law, and *res judicata* applies.

Analysis

I have reviewed the Decision of the previous arbitration and note that the landlord amended the original application so that a claim for a future month of rent could be considered. The amendment was allowed and the landlord was successful in obtaining a monetary order for unpaid rent for 2 months after the tenancy had ended. The

Decision is silent on whether or not it was open to the landlord to make further claims for rent, and if the Arbitrator had dismissed further rent claims with leave to reapply, the landlord could make the claim. However, the landlord did not make that application and the tenant claims that *res judicata* applies. In considering the issue, I refer to the following case:

“Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache and Vey Gamache v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd.*, Prince George Registry, Docket No. 28394 dated 15 November, 1996, quoted with approval the following passage from the judgement of *Henderson v. Henderson*, (1843), 67 E.R. 313.

In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.

Mr. Justice Hall goes on to state at p.12 “Disputed issues that are finally determined in one proceeding may be held to be binding on a party when that issue comes up in subsequent litigation”.

In the circumstances, I find that the issue of unpaid rent has already been dealt with at arbitration and it is not open to the landlord to make further claims for rent from the tenant.

However, it is not uncommon for a landlord to make a claim for an Order of Possession and a monetary order for unpaid rent and then applying for damages after the tenancy had ended, and I find that the landlord is not barred from making that application now.

With respect to new locks, I have no evidence before me to substantiate that claim. I find that the landlord has failed to establish that the tenant did not leave the keys, nor that new locks purchased were that amount. In order to be successful in such a claim, the landlord must establish the cost, and I find that an unexplained entry on a mastercard statement is not sufficient. There is nothing on the statement that corroborates the landlord's claim.

The *Residential Tenancy Act* states that:

Director's orders: fees and monetary orders

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Further, the regulations state that a landlord may not charge any non-refundable fees except:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

The only fee that the landlord may be successful for in arbitration is the filing fee if the landlord is successful with the application. Therefore, I find that the landlord's claim for \$46.45 for registered letters and stamps cannot succeed.

Similarly, I find no basis for the landlord's claim for travel or any authority to make such an award, and I dismiss that portion of the landlord's application. This is a business expense, which is not recoverable under the *Act*.

With respect to the landlord's application for advertising the rental unit, I find that the landlord has proven the amount and I am satisfied that the landlord had to incur those costs and would not normally have had to incur them at that time because the tenancy was for a fixed term, and these costs are recoverable against the tenant.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

In summary, I find that the landlord has established a claim in the amount of \$218.41 and recovery of the \$50.00 filing fee for the cost of the application. The landlord's remaining application for unpaid rent and other expenses are hereby dismissed without leave to reapply.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$268.41.

This order is final and binding on the parties and may be enforced.

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 04, 2013

Residential Tenancy Branch

