



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR MNDC FF

Introduction

This hearing dealt with monetary applications by the landlord and the tenant. Both parties participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on June 1, 2013 as a fixed-term tenancy to end on May 31, 2014, with monthly rent of \$1600 payable in advance on the first day of each month. On October 1, 2013 the landlord received an order of possession and a monetary order for unpaid rent from June 2013 through September 2013. A bailiff removed the tenant from the rental unit on October 21, 2013.

Landlord's Claim

The landlord claimed the following monetary compensation:

- 1) \$1600 for October 2013 rent – the tenant did not pay rent for October 2013, and he remained in the unit until October 21, 2013;
- 2) \$120 for court filing fees and \$2291.57 for bailiff services – the tenant did not vacate after he was served with the order of possession, so the landlord had to obtain a writ of possession and hire a bailiff to remove the tenant; and

- 3) \$672 for four months of property management fees, at \$168 per month – the landlord stated that he had to pay management fees for July, August, September and October 2013 because of work created by the tenant. The landlord acknowledged that there was no provision in the tenancy agreement requiring the tenant to be responsible for such fees.

The tenant's response to the landlord's claim was as follows. The tenant stated that on October 21, 2013, when the bailiff attended, the tenant offered to pay the landlord the outstanding rent, if the landlord could wait one and a half hours for the tenant to obtain the funds. However, the landlord refused. The tenant submitted that the landlord's priority was not in having the rent paid but in assuming the property development value and avoiding liability from the personal injury the tenant suffered in dealing with the property.

Tenant's Claim

The tenant stated that the tenancy agreement was based on the tenant's desire to purchase the property. The tenant stated that the landlord was running a wood lot as a residential property. The tenant stated that there were five trees on the property risking falling on his laboratory, and the tenant had to do "emergency woodlot renovation." The tenant stated that he did most of the work himself, and the neighbour operated his machinery. The tenant claimed \$24,000 in compensation; however, in his evidence his breakdown of the claim totalled \$27,846.

The landlord's response to the tenant's claim was that he never asked the tenant to do anything, and he had no right to cut down trees on the rental property. In the tenant's letter to the landlord the tenant stated very clearly that he did not expect compensation for any upgrades he made to the property. The landlord stated that the upgrades were only for the tenant's own enjoyment of the property. The landlord submitted that as the neighbour loaned the tenant the equipment, there was no money involved.

Analysis

Landlord's Claim

I accept the landlord's evidence that it was necessary for him to obtain a writ of possession and hire a bailiff to remove the tenant, as the order of possession was dated October 1, 2013 but the tenant failed to vacate until October 21, 2014. The landlord had no obligation to take steps to preserve the tenancy by accepting outstanding rent at that time. I therefore find that the landlord is entitled to \$2411.57 as claimed for the writ and the bailiff fees.

The tenancy ended pursuant to the notice to end tenancy for unpaid rent; therefore, any monetary amount that the landlord may be entitled to after that time was not rent, it was lost revenue because the tenant was overholding. I therefore find that the landlord is only entitled to lost revenue from October 1 to 21, 2013, in the amount of \$1083.81 (calculated at a per diem rate of \$51.61 for 21 days).

I find no basis for the landlord's claim of property management fees. This was a cost that the landlord chose to incur rather than managing the rental property himself. I therefore dismiss that portion of the landlord's claim.

As the landlord's application was mostly successful, he is also entitled to recovery of the \$50 filing fee for the cost of his application.

Tenant's Claim

I find that the tenant's claim cannot succeed. The tenant clearly undertook the work on the property without the landlord's permission, and he clearly indicated that he did not expect to be compensated for his work. The tenant did not establish that he paid any money for equipment rental or for another party's labour. Finally, the tenant's breakdown of his claim did not reflect the amount claimed in his application, and it exceeded the amount over which I have jurisdiction.

As the tenant's claim was not successful, he is not entitled to recovery of the filing fee for the cost of his application.

Conclusion

The tenant's application is dismissed in its entirety.

I grant the landlord an order under section 67 for the balance due of \$3545.38. This order may be filed in the Small Claims Court and enforced 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: June 19, 2014

Residential Tenancy Branch

