



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord	MDNC MND MNSD FF
Tenant	MNDC FF

Introduction

This hearing was convened in response to cross-applications for Dispute Resolution.

The landlord sought compensation for damage or loss under the Act, regulation, or tenancy agreement – to recover bailiff's costs associated with enforcement of an Order of Possession dated December 09, 2013 and extended by a Supreme Court Order (January 08, 2014) as a Writ of Possession to May 31, 2012. The landlord seeks for the Order to be offset by the security deposit held by the landlord, and to recover the filing fee. The landlord also sought compensation for damage and loss inclusive of costs for cleaning.

The tenant sought compensation for loss of personal property pursuant to it being removed by court bailiffs and the landlord's Writ of Possession.

Both parties appeared at the teleconference hearing. Each party was given opportunity to provide their relevant evidence orally, respond to each other's testimony, and to provide all relevant evidence and testimony they wished to provide. A Decision was reached in respect to that which was relevant to the matters before me.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order?
Is the tenant entitled to a Monetary Order?

Background and Evidence

The tenancy has ended and the landlord still holds the tenant's security deposit of \$350.00 in trust, collected in 2007. The relevant evidence in this matter is that the tenancy was ordered at an end if the tenant did not pay the landlord \$1105.00 by the end of December 13, 2013. The tenant confirmed they did not do so and the landlord served the tenant with the Order of Possession on December 16, 2013. The tenant was to deliver vacant possession of the unit to the landlord 2 days after the tenant being served by the order but did not do so. The landlord obtained a *Writ of Possession* of

the Supreme Court enforcing the Order of Possession dated December 09, 2013. The landlord sought the services of a bailiff to realize the execution of the *Writ* enforcing the Order of Possession, and now seeks to recover the costs associated with executing the *Writ*, in the sum amount of \$2317.83 – for which the landlord provided proof of payment. The landlord also seeks the cost of the Supreme Court filing fee of \$120.00. The landlord provided a letter from the bailiff confirming they had removed all items from the rental unit and provided the landlord with “vacant possession” as per the Supreme Court *Writ*. It was noted in the evidence from the bailiff that in the operation of their service the tenant was not permitted to re-enter the unit once they completed removal of all items in the unit.

In addition, the landlord seeks costs associated with removing the purported cast-offs of the tenant remaining on the landlord’s property 14 days after their removal by the bailiff in the receipted amount of \$425.00, replacement of carpeting and other flooring from the entire suite in the sum of \$462.74, repainting the entire unit - \$320.00, replacement of 2 ceiling panels - \$30.00 and cleaning in the amount of \$125.00. The landlord provided a series of photographs taken by the Bailiff *before* they removed the tenant’s belongings, as well as some receipts from a home improvement outlet for specific items by the landlord to remediate the rental unit.

The tenant sought compensation for an abundance of items which the landlord claims was removed by the bailiff, but which the tenant claims was not removed by the bailiff and were still in the possession of the landlord when the bailiff completed their execution of removing all items from the rental unit according to the *Writ*. The tenant provided a list of items totalling \$3523.00, which they claim the landlord should have protected.

Analysis

Landlord’s claim

On the face of the evidence, I accept that both parties had a duty to abide by the Order of the Supreme Court. In this matter, the tenant was obligated to provide the landlord with vacant possession by December 16, 2013. I find the tenant did not do so, leaving it available to the landlord to have the Order of Possession enforced via the Supreme Court. I find there is only one way to enforce an Order of Possession and the landlord determined to use it. As a result, I find the landlord’s costs associated with enforcing the order are valid and therefore I grant the landlord their cost / loss to enforce the order in the claimed amount of **\$2317.83** as well as the court registry filing fee of **\$120.00**.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim on balance of probabilities as prescribed by **Section 7** of the Act. Section 7 prescribes that proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was *solely* the result of a breach of the tenancy agreement or Act,

verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In this case, I find the landlord's evidence does not support that the renovations by the landlord were required, and more specifically, were required as a result of the tenant's conduct or neglect in violation of the Act or the tenancy agreement. The landlord has not provided sufficient evidence that the tenant caused damage beyond reasonable wear and tear and for which the tenant should be held accountable. Even if the landlord did establish the tenant is responsible, I find the landlord has not provided sufficient evidence of how they mitigated costs, as the landlord has not provided receipted evidence of such costs for the majority of their claim. As a result of all the above, I **dismiss** the landlord's claim for renovations, without leave to reapply.

I find that the landlord gave the tenant an Order of Possession on December 16, 2014, and the tenant was obligated to move their belongings and render the rental unit *reasonably clean* as required by the Act no later than December 18, 2014. As the tenant did neither as ordered the landlord was placed in the position of having to do both at their cost. I find the landlord's claim for cleaning is not extravagant and as result, I grant the landlord's claim for cleaning in the amount of **\$125.00**. I also find the landlord's claim for disposing of the tenant's belongings is supported by a receipt for same, and as a result I grant the landlord the requested amount of **\$425.00**.

As the landlord was partly successful in their application, I grant the landlord recovery of their filing fee in the amount of \$50.00.

Tenant's claim

I find that I prefer the evidence of the landlord, that the bailiff rendered the rental unit "vacant" upon completing their service pursuant to the Supreme Court Writ of Possession, and that the landlord no longer retained control over any of the tenant's items. I further find that after the bailiff removed all items from the rental unit the landlord was no longer obligated to protect or harbour any of the tenant's items placed outside the rental unit. As a result, I find that the tenant cannot hold the landlord accountable for a subsequent loss of their items. I effectively **dismiss** the tenant's entire claim on application, without leave to reapply.

Calculation for Monetary Order: The security deposit will be off-set from the award made herein.

Landlord's total award	\$2987.83
Filing Fees for the cost of this application	50.00
<i>Less security deposit and applicable interest to date</i>	<i>-358.38</i>
Total Monetary Award	\$2679.45

Conclusion

The tenant's application **is dismissed**, without leave to reapply. The landlord's application is granted in part.

I Order that the landlord retain the tenant's security deposit of \$350.00 and accrued interest of \$8.38 in partial satisfaction of the landlord's award. **I grant** the landlord an Order for the balance under Section 67 of the Act in the amount of **\$2679.45**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: May 20, 2014

Residential Tenancy Branch

