



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRECEDENT INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, CNR, MND, MNR, MNSD, MNDC, RR, FF

Introduction

This hearing dealt with applications by the landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and a monetary order for unpaid rent, loss of income, the cost of repairs, painting, cleaning postage and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her monetary claim.

The tenant applied to cancel the notice to end tenancy, to reduce rent and for a monetary order for the cost of storage, repairs and dump fees. The tenant also applied for the recovery of a security deposit, a pet deposit and the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence, make submissions and give affirmed testimony.

The tenant acknowledged receipt of evidence submitted by the landlord. The tenant had sent her evidence by registered mail on May 09, 2014 to the landlord's address as written on the notice to end tenancy. The landlord stated that that address was provided in error and that she had not received the tenant's evidence. The tenant filed a copy of the tracking slip and therefore I find that the landlord has been served in accordance with s.88 of the *Residential Tenancy Act*

The tenant moved out on May 20, 2014. Since the tenant has moved out, the landlord no longer requires an order of possession and in addition, the portion of the tenant's application to cancel the notice to end tenancy and reduce rent is moot. Therefore, this hearing only dealt with the monetary claim of both parties.

Issues to be decided

Is the landlord entitled to a monetary order to recover unpaid rent, loss of income, the cost of repairs, painting, cleaning postage and the filing fee? Did the tenant pay a security and a pet deposit? Is the tenant entitled to her monetary claim for the cost of storage, repairs and dump fees?

Background and Evidence

The tenancy started on July 15, 2012 and ended on May 20, 2014. The monthly rent was \$2,500.00 due on the first of the month. Prior to moving in, the tenant paid a security deposit of \$1,250.00. The tenant stated that she also paid a pet deposit of \$1,250.00 but the landlord denied having received a pet deposit. The tenant stated that she paid the deposit to the manager who was employed by the owner at the time the tenancy started and is no longer employed by the landlord.

The tenant testified that she signed the tenancy agreement on July 14, 2012 and at the time of signing; she paid the manager a cheque in the amount of \$2,500.00 and cash in the amount of \$1,250.00. The tenant stated that the cheque was for the two deposits and the cash was for rent for the period of July 15 to August 01, 2012. The tenant stated that the reason for paying \$1,250.00 in cash is because she ran out of cheques. The tenant also stated that the manager had given her a receipt for the cash paid, but she had not filed it into evidence.

The tenant referred to the tenancy agreement to confirm that she had paid a pet deposit. Both parties filed copies of the tenancy agreement which differed greatly from each other in many respects.

The tenant's copy states that the tenant was required to pay security and pet deposits in the amount of \$1,275.00 each, by July 20, 2012. The landlord's copy states that the tenant was required to pay \$1,250.00 for security deposit by July 15, 2012 and that a pet deposit was not applicable. The signature of the manager was significantly different on both tenancy agreements.

The landlord stated that she obtained information from her accountant and filed a copy of a bank deposit slip dated July 16, 2012 which shows that the landlord deposited a cheque of \$2,500.00 from the tenant and a cash deposit from another person unrelated to this dispute, into the business account of the company that owns the rental property. The landlord also filed a bank statement regarding activity in this account. This statement shows the next deposit of a rent cheque of \$2,500.00 on August 01, 2012.

The tenant stated that she verbally gave notice to end tenancy on April 28, 2014 and followed it up with a written notice delivered to the landlord's home on April 30, 2014. The tenant stated that the landlord was on his balcony and told her to put the letter in his mail box. The notice consists of a print out of an email written on April 30, 2014. The notice has a forwarding address hand written and dated May 01, 2014.

The landlord stated that the tenant delivered the letter to the landlord's home on May 01, 2014 and not April 30, 2014 as per the tenant's testimony. The tenant moved out on May 20, 2014.

The landlord stated that the rental unit was left in a mess and required repairs and cleaning. The landlord filed quotations for the work done and stated that the actual cost would probably be less than the quotation. Since the work was still in progress, the landlord was unable to provide information on actual costs incurred. I explained to the landlord that this portion of her claim would be dismissed with leave to reapply.

The tenant failed to pay rent on May 01, 2014 and requested the landlord to use the deposits for rent. The landlord refused to do so and on May 05, 2014, the landlord served the tenant with a ten day notice to end tenancy for non payment of rent. The tenant filed an application on May 08, 2014 to dispute the notice.

The landlord has filed a claim as follows:

1.	Unpaid rent for May 2014	\$2,500.00
2.	Loss of income for June 2014	\$2,500.00
3.	Painting	\$5,995.00
4.	Carpet cleaning	\$431.00
5.	Yard work	\$1,630.00
6.	House cleaning	\$787.50
7.	General damages	\$750.00
8.	Postage and general expenses	\$197.57
9.	Filing fee	\$100.00
	Total	\$14,891.07

The tenant stated that a portion of the garage was locked for the landlord's use. The tenant agreed that this portion was locked right from the start of tenancy and upon moving in she requested the landlord to remove his belongings. The landlord refused to. The tenant is claiming \$100.00 as storage fees for the entire duration of the tenancy for a total amount of \$2,300.00

The tenant also stated that she incurred an expense of \$146.95 to repair the hot water tank. The landlord agreed to cover this cost.

The tenant testified that the garbage removal service that the landlord paid for did not pick up their garbage. In a note dated June 10, 2013 the tenant asked the landlord to stop paying for the service.

The tenant stated that she made a trip to the dump once a month and is claiming \$25.00 per month for the duration of the tenancy for a total of \$575.00. The tenant did not file any invoices to support her claim.

The landlord stated that she paid for the garbage removal service and only found out that they were not picking up garbage when the tenant informed her and asked her to stop paying for garbage pickup. The landlord filed an invoice to support her testimony. The invoice indicates that the landlord paid approximately \$25.00 per month for the service.

The tenant has filed a claim as follows:

1.	Storage	\$2,300.00
2.	Hot water tank repair	\$146.95
3.	Dump fees for 23 months	\$575.00
4.	Filing fee	\$50.00
	Total	\$3,071.95

Analysis

Security and pet deposits

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case the tenant claimed to have paid a pet deposit and the landlord denies having received one. The tenant stated that she paid \$2,500.00 by cheque and \$1,250.00 by cash on July 14 for the two deposits and rent for the period of July 15 to August 01. The tenant stated that the reason for paying cash is that she ran out of cheques. However, the tenant had the option of providing a single cheque for the total amount since she states that she made all the payments on the same day. The tenant also could have asked for a receipt which she said she did but failed to file it into evidence. The tenant was aware that the landlord was disputing the payment of a pet deposit and therefore she should have filed a copy of the receipt or any other evidence to support her testimony that she did pay a pet deposit. The tenant relies on her copy of the tenancy agreement. The copies filed by both parties are different.

The tenant's copy states that she was required to pay \$1,275.00 for each deposit by July 20, while the landlord's copy states that the tenant was required to pay \$1,250.00 by July 15 and that a pet deposit was not applicable. The signatures of the manager appear to be different on the tenancy agreements. Upon reviewing both tenancy agreements, I am unable to determine which one is the true one. However, I do find that the tenant's copy has \$1,275.00 as the amount paid for the deposit and this is incorrect as agreed to by both parties. Therefore based on this fact, I tend to favor the landlord's copy of the tenancy agreement as being the true one.

Based on the above, I find that the tenant has not proven that she paid a pet deposit of \$1,250.00. Therefore on a balance of probabilities, I find that it is more likely than not that the tenant did not pay a pet deposit and that the only deposit held by the landlord at this time is a security deposit of \$1,250.00.

The landlord's monetary claim is assessed as follows:

1. Unpaid rent for May 2014 - \$2,500.00

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. The tenant agreed that she did not pay rent for May 2014 and therefore I find that the landlord is entitled to rent in the amount of \$2,500.00.

2. Loss of income for June 2014

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties and the tenant's written notice to end tenancy dated May 01, 2014, I find on a balance of probabilities that it is more likely than not that the tenant provided the notice to end tenancy on May 01, 2014. Since rent is due on the first of the month, by providing notice on May 01, 2014, the tenant did not give the landlord adequate notice to end the tenancy and the earliest the tenant could end the tenancy would be June 01, 2014.

The tenant did not pay rent on May 01, 2014 and was served a notice to end tenancy. *Residential Tenancy Policy Guideline#3* refers to claims for loss of income. This guideline states that in a month to month tenancy, if the tenancy is ended by the landlord for nonpayment of rent, the landlord may recover any loss of rent suffered for the next month, as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.

Section 5 of the *Residential Tenancy Policy Guideline* states that where a landlord gives a notice to end tenancy and is entitled to claim damages for loss of rental income, the landlord's obligation to re-rent the rental unit begins after the relevant dispute period set out in the *Residential Tenancy Act* has expired. If the tenant files an application to dispute the notice, the landlord is not required to find a new tenant until the arbitration decision and order are received and the time limits for a review application has passed.

In this case, I find that on May 07, 2014, the tenant filed an application to dispute the notice to end tenancy and then moved out on May 20, 2014. The landlord made efforts to find a tenant for June 01, but was unsuccessful and therefore suffered a loss of income. I find that the tenant is liable for this loss and accordingly I award the landlord her claim of \$2,500.00 for loss of income.

Items 3 to 8 of the landlord's claim are dismissed with leave to reapply.

8. Postage and general expense - \$197.57

The legislation does not permit me to award any litigation related costs other than the filing fee.

9. Filing fee - \$100.00

The landlord has proven her claim and therefore is entitled to the filing fee of \$50.00.

The landlord has established the following claim:

1.	Unpaid rent for May 2014	\$2,500.00
2.	Loss of income for June 2014	\$2,500.00
3.	Painting	\$0.00
4.	Carpet cleaning	\$0.00
5.	Yard work	\$0.00
6.	House cleaning	\$0.00
7.	General damages	\$0.00
8.	Postage and general expenses	\$0.00
9.	Filing fee	\$100.00
	Total	\$5,100.00

Tenant's application:

1. Storage - \$2,300.00

The tenant agreed that the landlord used this area of the garage for his own purposes right from the start of tenancy.

This storage area was locked when the tenant viewed the rental unit. Both copies of the tenancy agreements filed into evidence indicate that storage is not included in the rent. At the start of tenancy on July 13, 2012, the tenant provided the manager with a list of requests and the request for storage was not listed. The tenant, in her written submission, states that on July 17, she found a note on the kitchen counter indicating that the landlord would be storing his property in the locked portion of the garage.

The parties discussed this issue via text messages and in person but the final outcome was that the landlord continued to use this storage area for his own purposes. In these circumstances I find that the Tenant could have filed an Application for Dispute Resolution long before the end of the tenancy, in which she could have requested an order requiring the landlord to allow her the use of this locked area in the garage. Based on the testimony of both parties, I find that by not applying for dispute resolution during the tenancy, the tenant took no steps to seek a solution to the agreed-upon problem. I further find that the tenant is now making a monetary claim for compensation after the tenancy ended. Accordingly, I find that the tenant is not entitled to compensation because she failed to take steps to address the issue in a timely manner.

2. Hot water tank repair - \$146.95

The landlord agreed to cover the cost of repair.

3. Dump fees for 23 months - \$575.00

The landlord agreed that she stopped paying for garbage removal after the tenant informed her on June 10, 2013, that the service was not being provided and that she should stop paying for it. The tenant took care of her own garbage removal after this date and therefore I award the tenant \$25.00 per month for the period of June 2013 to the end of tenancy for a total of 300.00.

4. Filing fee - \$50.00

The tenant has proven a portion of her claim and therefore I award her the recovery of the filing fee.

Overall the tenant has established a claim as follows:

1.	Storage	\$0.00
2.	Hot water tank repair	\$146.95
3.	Dump fees for 23 months	\$300.00
4.	Filing fee	\$50.00
	Total	\$496.95

The landlord has established a claim of \$5,100.00 and the tenant has established a claim of \$496.95. The landlord also has the security deposit of \$1,250.00 in her possession, which she must return to the tenant. Therefore the tenant's entitlement is \$1,746.95.

I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$3,353.05 which consists of the difference in the entitlements of both parties.

Conclusion

I grant the landlord a monetary order in the amount of \$3,353.05.

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 25, 2014

Residential Tenancy Branch

