



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This is an application for an order of possession based on the Ten Day Notice to End Tenancy for Unpaid Rent dated February 19, 2014 and for monetary compensation for rental arrears, utilities owed to the landlord by the tenant, cleaning costs and the expenses associated with locating and serving the tenant.

The applicant landlord participated in the hearing. Despite being served with the Notice of Hearing documents in person by a process server on June 30, 2014, the respondent did not appear and the hearing was therefore conducted in the respondent's absence.

The service of the necessary documents to the tenant was verified by an affidavit of service signed and notarized. The landlord explained that the tenant vacated without leaving an address and continued to relocate repeatedly so the landlord was not able to serve the Notice of Hearing within 3 days of making the application. However, I accept that the tenant was validly served and received the documents approximately 3 weeks prior to the hearing date.

At the outset of the hearing the landlord advised that the tenant vacated the rental unit on February 28, 2014. Therefore I find that the portion of the landlord's application relating to the request for an Order of Possession is now moot.

Issue(s) to be Decided

Is the landlord entitled to compensation for rental arrears and utilities owed?

Is the landlord entitled to recoup the cost of preparing for the arbitration including locating and serving the tenant?

Background and Evidence

The tenancy began June 1, 2013 and ended February 28, 2014. Rent was set at \$1,700.00 per month plus utilities.

The landlord testified that the tenant fell into arrears for rent in the amount of \$13,210.00 plus \$389.00 in utility charges, which are being claimed.

The landlord is also claiming cleaning costs of \$800.00 as the tenant failed to leave the unit reasonably clean.

In addition to the above, the landlord testified that, because the tenant vacated without leaving a forwarding address, the landlord incurred costs to locate the tenant including mail and professional locator services totaling \$7,604.25, which is being claimed. The landlord pointed out that the tenant's address kept changing and this delayed the landlord's ability to quickly serve the tenant and added extra costs. The landlord provided receipts and invoices for the mail and serving fees.

Finally the landlord is claiming filing costs for the application for Dispute Resolution in the amount of \$100.00 and the filing fee for Small Claims Services of \$156.00.

Analysis

With respect to rent owed, I find section 26 of the Act states that rent must be paid when it is due, under a tenancy agreement. I find that the tenant owed \$13,210.00 in rent up to the end of the tenancy in February 201 and the landlord is entitled to compensation in this amount.

With respect to the accrued utility arrears, I find that section 46(6) of the Act states that unpaid utilities can be considered as rental arrears if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utilities remain unpaid more than 30 days after the tenant receives a written demand for payment. If the above conditions are met, unpaid utility charges are considered as unpaid rent and used as a basis to give notice.

I find in this tenancy relationship there was a written term in the tenancy agreement that utility payments were not included in the rent. Accordingly, I find that the tenant is required to reimburse the landlord \$389.00 in hydro costs.

In regard to the landlord's other monetary claims, I find that, an Applicant's right to claim damages from another party falls under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances. . Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, I find that the landlord is required to prove the existence and value of the damage or loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

To determine whether or not the tenant complied with this requirement, I find that this can best be established by comparing the unit's condition as it was when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Conducting move-in and move out condition inspection reports are a requirement of the Act under section 23(3) and section 35 of the Act and places the obligation on the landlord to complete the condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, the landlord did not submit a move-in condition inspection report nor move-out condition inspection report was completed. I find the failure to comply with the Act and the absence of these reports has hindered the landlord's ability to prove that the tenant should be held accountable for the costs of cleaning or repairs.

I also find that the landlord's claim for cleaning costs is not sufficiently detailed nor adequately supported by time sheets, charges or invoices to satisfy element 3 of the test for damages. Given the above, I find that the landlord's monetary claim for the cleaning cost must therefore be dismissed.

I find the landlord's claim for reimbursement of \$7,604.25 for locating, serving and mailing or other costs for preparing for the hearing, are not compensable expenditures under the Residential Tenancy Act and must therefore be dismissed. However, I find that the landlord must be reimbursed the \$100.00 cost of the application.

The costs for filing in Small Claims Court are not expenditures that may be claimed under the Residential Tenancy Act and therefore the landlord's claim for \$156.00 for filing in Small Claims court must be dismissed.

Based on the evidence before me, I find that the landlord is entitled to total monetary compensation of \$13,699.00 comprised of \$13,210.00 for rental arrears, \$389.00 for utility arrears and the \$100.00 cost of filing the application. The landlord will retain the tenant's security deposit of \$850.00 in partial satisfaction of the claim leaving \$12,849.00 still owed to the landlord.

I hereby grant the Landlord an order under section 67 for \$12,849.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The request for an Order of Possession is found to be moot as the tenant moved out prior to the hearing date. The remainder of the application is dismissed without leave.

Conclusion

The landlord is partly successful in the application and is granted a monetary order. The request for an Order of Possession is moot as the tenant vacated and the remainder of the landlord's application is dismissed without leave.

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 22, 2014

Residential Tenancy Branch

