



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, OPC, OPB, MNDC, MNSD, MND, FF

Introduction

This was an orally amended application by the landlord for a monetary order and an Order of Possession.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary matters

During the hearing and after considerable time it was clarified that this is the *third* proceeding related to this matter, and that certain matters in the current application have already been determined and Orders have *already been* granted in previous proceedings, including an Order of Possession and a Monetary Order for unpaid rent to April 30, 2014, inclusive of an Order for retention of the security deposit in partial satisfaction of the monetary claims. It must also be noted that a monetary award to the tenant of \$1000.00 was Ordered deducted from rent owed to the landlord, which in turn the landlord must deduct from their April 30, 2014 Monetary Order if seeking to satisfy it or enforce it. These matters are considered *res judicata* – that is, *already determined in the appropriate forum and manner* – and not eligible for re-determination . It must further be noted that the landlord's request for a filing fee paid to an earlier application is also *denied* on the same legal principle.

Therefore, the **valid** balance of the landlord's *current application* solely seeks:

- unpaid rent for May 2014 (\$500.00) and

- loss of revenue for June 2014 (\$500.00) and
- cleaning and damages (\$1527.82) and
- recovery of the filing fee for the *current* application(\$50.00).

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order in the amount claimed?

Background and Evidence

The relevant testimony and evidence in this matter is that the tenancy started November 2009 and ended May 30, 2014. During the tenancy the payable rent was \$500.00 per month. At the start of the tenancy the parties did not conduct a move in inspection. At the end of the tenancy the parties did not conduct a mutual move out inspection. However, the landlord claims the tenant left the unit unclean and with wear and tear beyond that which is reasonable, and as a result the landlord could not immediately re-rent the unit for June 01, 2014. The landlord testified that they expended costs for cleaning the unit and painting the interior of the rental unit. The landlord submitted receipts in the sum of \$313.12, which included painting supplies and plumbing parts, as well as an accounting of labour for cleaning and painting.

The tenant acknowledged that the rental unit was in “good shape” at the start of the tenancy and also acknowledged that upon moving from the unit there was some “scribbling” on some of the walls done by her 4 young children, and that some of the doors were scratched by their 3 dogs, but that they left the rental unit reasonably clean and undamaged: “Swept-up and removed everything”. They also testified that they did not pay the rent for May 2014.

Both parties testified that after 3 hearings neither of them has a further monetary claim against the other.

Analysis

I find it must be emphasized that both parties acknowledged that neither of them has a further monetary claim against the other.

The *Act* states that rent is due according to the tenancy agreement of the parties. I find

the tenant did not pay the rent for May 2014 and it is owed to the landlord. I grant the landlord **\$500.00** for unpaid rent for May 2014 – without leave to reapply.

Under the *Act*, the party claiming the damage or loss, in this matter the landlord, bears the burden of proof. Moreover, the landlord must satisfy each component of the following test established by Section 7 of the *Act*:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

In addition, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (with allowance for such items as loss of rent or loss of occupation during the repair, depreciation or wear and tear), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

The landlord relies on their determination that the tenant caused the purported damage. The tenant relies on their argument that the rental unit only suffered reasonable wear and tear for a 5 year tenancy.

In the absence of move-in and move-out condition inspection reports as required by the *Act* to establish what deficiencies may have occurred during the tenancy I find the landlord has not met the above test for damages and loss. The landlord has not provided evidence with sufficient evidentiary weight to support her claim that the tenant in this matter caused damage to the rental unit to the magnitude the landlord claims. None the less, I accept the tenant's testimony that some of the walls of the unit had

“scribbling” and that their 3 dogs caused scratches on some of the doors. As a result, in the absence of sufficient evidence to fully account for the landlord’s claim, I grant the landlord the limited and nominal amount of **\$500.00** for cleaning and painting - without leave to reapply.

I find that as a result of the above the landlord was unable to re-rent the unit for June 01, 2014, therefore I further grant the landlord **\$500.00** for loss of revenue for June 2014 – without leave to reapply. The landlord is entitled to recover the filing fee for *this* application.

Calculation for Monetary Order

Unpaid rent for May 2014	\$ 500.00
Loss of revenue for June 2014	500.00
Cleaning and painting	500.00
Filing fee	50.00
Total monetary award to landlord	\$ 1550.00

Conclusion

The landlord’s application, in relevant part, has been granted, without leave to reapply.

I grant the landlord an Order under Section 67 of the Act for the amount of **\$1550.00**. 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: September 10, 2014

Residential Tenancy Branch

