



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, MND, MNR, MNSD, FF, CNC

Introduction

There are applications filed by both parties. The landlord seeks an order of possession as a result of a notice to end tenancy issued for cause and for breach of an agreement with the landlord. The landlord also seeks a monetary order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the security deposit and recovery of the filing fee. The tenant seeks an order to cancel the notice to end tenancy issued for cause, a monetary order for money owed or compensation for damage or loss and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have confirmed receipt of the notice of hearing package submitted by the other party, I am satisfied that both parties have been properly served.

Preliminary Matters:

The landlord requested an adjournment to have the hearing conducted in person as opposed to the conference call. The tenant disputes this and wishes to proceed. The landlord's counsel, S.G. states that the landlord, K.G. has hearing issues and would greatly benefit from having the hearing conducted in person. The landlord's agent states that the landlord would be better able to participate and be given an opportunity to respond to the tenant's claims. After considering the position of both parties, the landlord's request for an adjournment to conduct the hearing in person is denied. The landlord's agent has failed to provide sufficient reason to not conduct the hearing as scheduled by conference call. When asked what would be different in a person to person hearing, the landlord's agent specified that it would allow the landlord an opportunity to respond to the tenant's claims because of poor hearing. The landlord's agent could not provide any relevant reasons as to why the landlord is unable to listen or understand, the landlord could not seek clarification from counsel as they are appearing as the landlord's agent in the conference call hearing.

Both parties are in agreement that as the tenancy has already ended that those portions of the application regarding possession need not be addressed. As such, the landlord's claim for an order of possession and the tenant's claims for more time, to cancel a notice to end tenancy are withdrawn. No further action is required for these portions of the claims.

The landlord states that the tenant's evidence package submitted to the Residential Tenancy Branch dated September 22, 2014 should be excluded as it was not submitted to the landlord as per the Rules of Procedure for evidence not submitted with the application. The tenant states that the documents relate to a response to the landlord's claims that he received in September 2014. The landlord disputes this stating that the contents clearly refer to the tenant's monetary claim which consists of supporting invoices. I find in reviewing the tenant's September 22, 2014 evidence package that it is only relevant to the tenant's monetary claim. As such, the tenant has filed late evidence regarding their own claim and not a response to the landlord's claim. The tenant's evidence dated September 22, 2014 is excluded and shall not be considered for this hearing. The tenant was notified that if he wished to verbally respond in the form of statement at a future time in the hearing regarding the landlord's claims that he was free to do so.

After dealing with preliminary matters for both parties the hearing was adjourned due to a lack of time as the conference call hearing went past the allotted time. Both parties were advised that they would be sent a new notice of an adjourned hearing to the confirmed addresses provided by both parties. Both parties were also instructed that no new evidence was to be submitted as the hearing had commenced. Both parties acknowledged their understanding.

The landlord made a request to submit new evidence in the form of photographs recently taken to support their claim. The landlord also states that copies of emails would be submitted as they were omitted in the landlord's evidence. The tenant disputes this stating that as his late evidence was excluded so should the landlords. I find that the landlord's request to submit additional late evidence is denied as the landlord has failed to provide sufficient reasons as to why this evidence could not be submitted prior with the landlord's documentary evidence. As such, the landlord's request to submit new supplemental evidence is denied. An interim decision was issued regarding this issue.

During the adjournment the tenant submitted late evidence on November 13, 2014. As there has already been a decision for both parties denying the submission of late evidence, this portion of the tenant's evidence is not allowed.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?
Is the landlord entitled to retain the security deposit?
Is the tenant entitled to a monetary order?

Background and Evidence

Both parties confirmed that there was no signed tenancy and that no condition inspection report was completed at the beginning or end of the tenancy. Both parties also confirmed that the landlord served the tenant with a 10 day notice to end tenancy issued for unpaid rent of \$2,350.00 on August 11, 2014 showing an effective end of tenancy date of August 21, 2014. Both parties also confirmed that the landlord served the tenant with a 1 month notice to end tenancy issued for cause dated July 25, 2014 showing an effective end of tenancy date of August 31, 2014. Both parties confirmed that the landlord still holds the \$1,150.00 security deposit paid by the tenant.

The landlord seeks an amended monetary claim of \$11,742.00 from the original \$13,047.00 which consists of \$5,875.00 for 2 1/2 months of unpaid rent and loss of rental income, \$4,500.00 for repairs and damage to the rental unit, \$769.00 for replacement of a shower glass door (estimated cost), \$598.00 for the cost of a missing stove. The landlord has withdrawn his claim for \$130.00 for the cost of changing the locks to the rental.

The landlord claims that the tenant vacated the rental unit after receiving a 10 day notice to end tenancy issued on August 11, 2014 showing an end of tenancy date of August 21, 2014. The landlord states that the tenant's August rent cheque was returned NSF from the bank. The tenant has admitted that he cancelled the August rent cheque and did not pay the rent as of the date of this hearing. The landlord also states that because of extensive damage caused by the tenant that there was a loss of rental income for September and October of \$2,350.00 per month. The landlord states that repairs took approximately 3 weeks to complete. The tenant accepts that of the damaged item list provided by the landlord in the repair estimates that he removed a section of baseboard moulding, but disputes the remaining portions of the landlord's claims. The landlord has not submitted any final invoices as work was not yet completed on repairs when he filed the dispute application. The landlord relies on the repair estimate for \$4,500.00 and the submitted photographs of the rental property after the tenancy ended. The tenant has stated that no damage was caused by the tenant and in fact that the tenant has added value to the rental property by making several additional improvements to the rental property to enhance it. The landlord states that

the tenant removed a shower door that requires replacement costing, \$769.00 and has provided an online printout from the internet for the cost. The tenant disputes this stating that the shower door was moved to the basement bathroom and was there when he vacated. The landlord disputes this stating that the basement bathroom had a different older shower door. The landlord claims that the tenant removed a stove from the rental property which costs \$598.00 to replace based upon an online printout from the internet. The tenant disputes this stating that there was no stove at the beginning of the tenancy and that he installed his own stove.

The tenant seeks a monetary claim of \$11,566.98 which consists of an estimate of \$4,412.10 for moving, \$396.62 for the cost of turf replacement, \$233.10 for soil excavating, \$929.60 for new carpet, \$367.80 for carpet installation, \$1,311.04 for new carpet, \$1,266.72 for new carpet, \$1,400.00 for asphalt paving costs, \$1,150.00 for the return of the security deposit and \$100.00 for recovery of the \$100.00 filing fee.

The tenants states that he vacated the rental unit prematurely and is seeking recovery of the estimated \$4,412.10 for moving. The tenant clarified that he paid \$1,984.50 for the move, but has not provided a copy of the invoice. The tenant stated it was submitted as attachment #7 in the documentary evidence. Attachment #7 in the tenant's evidence is shown as a 4 page printout with no apparent relation as a invoice. It appears to be printout of House Application Questions work book. The tenant also seeks \$396.62 for turf, \$233.10 for soil, \$929.60, \$1,311.04 and \$1,266.72 for carpet, \$367.80 for carpet installation for improvements made to the rental property. The tenant states that he is owed these amounts as he took the initiative to improve them. The landlord disputes these claims stating that he was unaware of these changes and that they were done without the knowledge or consent of the landlord. The tenant confirmed in his direct testimony that he took the initiative to change these items without the consent of the landlord or notice to the landlord. The tenant also seeks recovery of \$1,400.00 for asphalt to for the driveway to improve it. The tenant has stated that this was changed without the owners consent and that the landlord refused this claim made by the tenant during the tenancy. The landlord states that all of these improvements were made without their knowledge or consent and that they are not the responsibility of the landlord. The landlord also states that some of the invoices submitted by the tenant are from 2010 and question why the tenant has chosen to seek recovery of these cost now as they occurred in 2010 with the landlord's supposed consent. The tenant has submitted a copy of the tenant's dog license fee from the City of Surrey dated October 27, 2010 to October 26, 2011, copies of two cheques from 2010, two invoices of a redacted bank statement showing, copies of various invoices from 2010 to 2014, estimates and a picture of a driveway.

Analysis

Both parties confirmed in their direct testimony that the tenant failed to pay rent owed for August 2014 by the tenant cancelling the rent cheque at the beginning of August and vacating the rental unit as per the landlord's 10 day notice to end tenancy issued for unpaid rent which shows an effective end of tenancy date on August 21, 2014. Both parties confirmed in their direct testimony that the tenant did not give notice to vacate the rental unit and vacated the rental unit on August 21, 2014. As such, I find that the landlord has established a claim for unpaid rent for August 2014 of \$2,350.00.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

On the landlord's claim for loss of rental income and damages, I find that the landlord has failed. The landlord has failed to provide sufficient evidence to satisfy me that damage was caused by the tenant nor to what extent how much damage was caused for the amount claimed. The landlord has not completed a condition inspection report for the move-in or the move-out to show the condition of the rental before and after the tenancy began nor were any receipts/invoices submitted to support their claim. The landlord has not provided any supporting evidence to satisfy me that there was a missing shower door nor a missing stove. The remaining portions of the landlord's claims are dismissed.

I find that the tenant has failed in their application. The tenant's claim for moving costs is dismissed as in this case based upon the tenant's direct testimony the tenants vacated in compliance with a 10 day notice to end tenancy issued for unpaid rent. Tenant chose to vacate the rental instead of filing an application for dispute. In the remaining portions of monetary compensation any improvements made to a rental property must be done with the consent of the landlord. In this case, it is clear based upon the tenant's direct testimony that the tenant took the initiative to make these improvements without notice or sent of the landlord. The tenant's monetary claim is dismissed.

The landlord has established a claim for unpaid rent of \$2,350.00 for August 2014. The landlord having been partially successful is entitled to recovery of \$50.00 of the filing fee. I order that the landlord retain the \$1,150.00 security deposit in partial satisfaction of the claim and I grant a monetary order under section 67 for the balance due of \$1,250.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$1,250.00.
The landlord may retain the security deposit.

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: November 26, 2014

Residential Tenancy Branch

