



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord testified that she personally served the tenant with the dispute resolution package on 3 January 2015. The landlord provided me a witnessed Proof of Service document that showed the same. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

The landlord testified that she personally served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 7 December 2014. The landlord provided me a witnessed Proof of Service document that showed the same. On the basis of this evidence, I am satisfied that the tenant was served with the 10 Day Notice pursuant to section 88 of the Act.

Preliminary Issue – Landlord's Request to Amend Application

At the hearing the landlord asked to amend her application to withdraw her application for an order of possession. The landlord testified that the tenant had abandoned the rental unit on or about 14 January 2015. I allowed this amendment as there is obviously no prejudice to the tenant in doing so.

Preliminary Issue – Scope of Landlord's Claim

The landlord provided me with photographic evidence regarding the condition in which the tenant left the rental unit. I informed the landlord that a claim of this nature was not properly before me as the landlord's claim had not yet crystalized at the time she made her application. I informed the landlord that, while I would not consider her claim as part of this application, she could still make another application in respect of her losses.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the landlord's claim and my findings around it are set out below.

This tenancy began 5 July 2014. Monthly rent of \$600.00 was due on the fifth. The landlord testified that she continues to hold the tenant's security deposit of \$300.00, which she collected on or about 5 July 2014.

On 7 December 2014, the landlord served the tenant with the 10 Day Notice. The 10 Day Notice set out that the tenant failed to pay \$600.00 in rent that was due 5 December 2014.

The landlord testified that she received \$200.00 from the tenant on 15 December 2014. The tenant testified that he paid the landlord \$200.00 on or about 9 December 2014. The date of this payment is immaterial.

The landlord testified that other than the \$200.00 payment, the landlord has not received any further payments towards rent from the tenant. The landlord testified that she has not received any receipts for emergency repairs from the tenant and that there are no orders of the Residential Tenancy Branch in relation to this tenancy.

The landlord testified that, on or about 14 January 2015, the tenant abandoned the rental unit. The tenant testified that he vacated the rental unit on 7 January 2015, but that he had not yet cleaned the unit or done the repairs that he intended to at that time.

The landlord testified that she noticed damage to the blinds in one window. The landlord provided me with a picture of the blinds. I observed from the picture that the ends of the blinds are snapped off in several spots. In particular, there are many slats missing near a cat that is shown to be sitting on the window sill. The tenant testified that his cat liked to jump into the window to look out and caused the damage to the blinds. The landlord testified that the blinds would cost \$80.00 to replace. The tenant testified that he believes the blinds would cost \$20.00 to replace. The landlord did not provide me with any receipts or any documentary evidence of the replacement costs of the blinds.

The landlord also claims for the costs of repairs to the insect screen. The tenant testified that the screen does not require replacement, but just needs to be put back into its frame.

The tenant made various allegations regarding harassment from the landlord.

The landlord seeks a monetary order in the amount of \$830.00:

Item	Amount
December Rent	\$600.00
December Partial Payment	-200.00
January Rent	600.00
Damage to Window Coverings	80.00
Recover Filing Fee	50.00
Offset Security Deposit	-300.00
Total Monetary Order Sought	\$830.00

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not provide me with any evidence that he was entitled to deduct amounts from his rent. The tenant and landlord provided consistent testimony regarding receipt of rent payments, that is, since 5 December 2014, the landlord has received \$200.00 towards rent. The tenant did not dispute that rent was owed for December. The tenant did not vacate the rental unit until at the earliest 7 January 2015. Accordingly, the tenant owed rent for January. The landlord has proven her entitlement to \$1,000.00 in rental arrears.

As the landlord and tenant agree that the damage to the blinds was caused by the tenant's cat. The tenant does not dispute that the screen is damaged, but suggests that it could be fixed with a simple repair. Thus, the only determination for me to make, is the compensation to which the landlord is entitled for the broken blinds and screen.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The landlord seeks \$80.00 for compensation for the blinds and screen. The tenant provided testimony the cost of replacing the blinds is \$20.00 and that the screen can be fixed by placing it back into its frame. The landlord has not provided me with receipts or documents that establish the costs of repairs. As the tenant agrees that the blinds cost at least \$20.00 to replace, I award the landlord that amount. I recognize that the landlord has incurred some loss from the damage caused to the screen, but I am unable to value the loss. Where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this, I award the landlord nominal damages of \$10.00 for the damage to screen. The landlord is entitled to recover \$30.00 from the tenant for damage to the blinds and insect screen.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$780.00 under the following terms:

Item	Amount
Rent Arrears	\$1,000.00
Damage to Blinds and Screen	30.00
Offset Security Deposit Amount	-300.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$780.00

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 23, 2015

Residential Tenancy Branch

