



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNR, MNDC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

The tenants did not attend this hearing, although I waited until 3:00 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 2:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord entered into written evidence a notarized statement from a process server who declared that she handed the female tenant a copy of the landlord's dispute resolution hearing package and written evidence package on September 18, 2014 at the residence of both the male and female tenant. Based on this evidence and the landlord's sworn testimony, I find that the tenant was duly served with these packages in accordance with sections 88 and 89(1) of the *Act* on September 18, 2014.

The landlord testified that the process server also attempted to hand separate packages to the male tenant on September 18, 2014. However, the male tenant refused to accept these packages from the process server. The landlord provided sworn testimony and written evidence that she sent the male tenant a copy of her dispute resolution hearing package and written evidence package by registered mail later that same day (i.e., September 18, 2014). She provided a copy of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. Pursuant to sections 88, 89(1) and 90 of the *Act*, I find that the male tenant was deemed served with these packages on September 23, 2014, the fifth day after their registered mailing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Background and Evidence

This periodic tenancy began on July 1, 2013. Monthly rent was set at \$1,600.00, payable in advance on the first of each month. Although the tenants paid a \$800.00 security deposit on July 1, 2013, the landlord gave undisputed sworn testimony that the tenants gave the landlord their authorization to retain that deposit in exchange for unpaid rent owing from July 1, 2014 until July 15, 2014. As per that agreement with the tenants, the landlord has retained the tenants' security deposit.

The landlord's application for a monetary award of \$3,505.51 included the following items:

Item	Amount
Unpaid Rent July 15-July 31, 2014	\$800.00
Loss of Rent August 1, 2014 – August 15, 2014	800.00
Recovery of Bailiff's Costs	1,484.28
Recovery of Court Registry Fee for Obtaining Writ of Possession	120.00
Steam Cleaner Rental	69.66
Ozonator to Remove Smoking Odour	56.00
Painting and Cleaning (\$95.00 + \$ 21.01 = \$ 116.01)	116.01
Miscellaneous Other Losses	59.56
Total of Above Items	\$3,445.95

The landlord testified that a previous Arbitrator issued an Order of Possession on July 2, 2014 on the basis of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) of June 6, 2014. The landlord provided the Residential Tenancy Branch (RTB) File Number for the previous Arbitrator's July 2, 2014 decision and Order.

The landlord testified that she commenced efforts to re-rent the premises on July 30, 2014, the date when she obtained vacant possession from the tenants after the court appointed bailiff evicted the tenants. The landlord gave undisputed sworn testimony supported by written evidence that she was unable to find a new tenant to occupy the rental unit until August 15, 2014.

At the hearing, the landlord testified that the tenants did not pay any rent for the month of July 2014. Since the tenants allowed the landlord to retain their security deposit in exchange for one-half month's rent during July 2014, the landlord testified that the tenants continue to owe her the remaining one-half month's rent for the last half of July 2014. The landlord applied for a monetary award of \$800.00 for unpaid rent owing for the last half of July 2014, and a monetary award of \$800.00 for loss of rent for the first half of August 2014.

The landlord also applied for the recovery of the bailiff's costs she incurred when the tenants refused to vacate the rental unit after the previous arbitrator issued a 2 Day Order of Possession on July 2, 2014.

The landlord and her husband testified that the landlord incurred expenses in steam cleaning the carpets and in painting and cleaning the premises at the end of this tenancy. They testified that it became necessary to obtain an "ozanator" because their cleaning and painting was unable to remove the smell of smoke from this rental unit without this product. The landlord testified that this was a non-smoking rental unit and the tenants ignored this provision of their tenancy agreement.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. As the tenants remained in the rental unit past the effective date of the 10 Day Notice issued to them on June 6, 2014, I find that the tenants are responsible for unpaid rent of \$800.00 owing for the last half of July 2014.

Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for August 2014, the tenants would have needed to provide their written notice to end this tenancy before July 1, 2014. This did not occur and the tenants failed to vacate the rental unit without the landlord's retention of a bailiff to obtain possession of this rental unit. There is undisputed evidence that the tenants did not pay any rent for August 2014. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for August 2014, and was successful in doing so by August 15, 2014. As such, I am satisfied that the landlord has discharged her duty under section 7(2) of the *Act* to minimize the tenants' exposure to the landlord's loss of rent for August 2014. I allow the landlord a monetary award of \$800.00 for her loss of rent for the first half of August 2014.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I have considered the landlord's application for a monetary award of her court bailiff's costs and the fees for obtaining a Writ of Possession from the Supreme Court of British Columbia. In so doing, I have reviewed both the July 2, 2014 decision and Order of Possession issued by the previous arbitrator and a subsequent July 23, 2014 decision of a second arbitrator dismissing the tenants' application for a review of that decision and Order. Once the second arbitrator dismissed the tenants' application for a review of the July 2, 2014 decision, the landlord was at liberty to obtain a Writ of Possession from the Supreme Court of British Columbia to enforce the Order of Possession. As the tenants remained in the rental unit after the expiration of all rights of dispute and review, I find that the landlord is entitled to recover the costs of enforcing the Order of Possession issued to her. Based on the undisputed written evidence and sworn testimony before me, I find on a balance of probabilities that the landlord incurred expenses of \$1,484.28 to secure the services of a court appointed bailiff and \$120.00 to obtain a Writ of Possession. For these reasons, I allow the landlord's application to recover these expenses.

Although the landlord submitted portions of the new Residential Tenancy Agreement with the new tenants who took possession of this rental unit on August 15, 2014, the landlord did not submit into written evidence a copy of the Agreement with the tenant. The landlord also failed to enter into written evidence a copy of the report of the July 1, 2013 joint move-in condition inspection and the report of the move-out condition inspection conducted by the landlord after this tenancy ended. Under these circumstances and without any evidence other than the landlord's sworn testimony, I am not satisfied that the landlord has submitted sufficient evidence to demonstrate that the Agreement between the parties called for the steam cleaning of the carpets in the rental unit at the end of this tenancy. Although I dismiss this element of the landlord's claim without leave to reapply, I do accept the sworn testimony of both the landlord and her spouse to the effect that the purchase of an ozanator became necessary as a result of the tenant's failure to abide by the no-smoking provisions of the Agreement. I allow the landlord a monetary award of \$56.00, the amount identified in the landlord's receipt for this item.

Without copies of the move-in and move-out condition inspection reports, photographs of the damage to the walls arising out of this tenancy and any other corroborating evidence other than receipts for the purchase of paint and painting supplies, I find that the landlord has not demonstrated her entitlement to a monetary award for repainting and cleaning. In this regard, I also note that the landlord testified that the premises were most recently painted in March 2012, over two years before this tenancy ended. I dismiss the landlord's application for the recovery of costs associated with cleaning and painting without leave to reapply.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, loss of rent and damages and costs resulting from this tenancy:

Item	Amount
Unpaid Rent July 15-July 31, 2014	\$800.00

Loss of Rent August 1, 2014 – August 15, 2014	800.00
Recovery of Bailiff's Costs	1,484.28
Recovery of Court Registry Fee for Obtaining Writ of Possession	120.00
Ozonator to Remove Smoking Odour	56.00
Total Monetary Order	\$3,260.28

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 29, 2015

Residential Tenancy Branch

