



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MN OPC MNDC FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 47, and 55; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the tenant agreed he received personally the Notice to end Tenancy dated May 30, 2015 and the Application for Dispute Resolution. I find the tenant was legally served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated May 30, 2015 for cause. Is the landlord now entitled to an Order of Possession and to a Monetary Order for damages to the property and filing fee?

Preliminary Issue:

The tenant noted there was a typographical mistake in his name, the "a" and "l" were reversed; he requested it be corrected. The correction was made for the Decision and Orders.

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced August 15, 2012, a security deposit of \$250 was paid but the landlord said the tenant did not pay the \$250 for rent from August 15 to 31, 2012 so the security deposit was used for the rent. Rent is currently \$500 a month.

The landlord served the Notice to End Tenancy for cause stating that:

1. The tenant or a person permitted on the property by the tenant has:
 - a. Significantly interfered with and unreasonably disturbed another occupant or the landlord
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - c. Put the landlord's property at significant risk
2. The tenant has caused extraordinary damage to the unit and has not done required repairs to the unit.

The landlord gave evidence on the causes. He said the tenant broke a window that was about 5 years old. The tenant said a friend broke the window when he was trying to get his attention. Apparently he threw a ball or something at the window. However, he said the window had hairline cracks already and was older than 5 years.

The landlord said the tenant was also using a leaking teapot which caused water damage to the stove and made it unsafe to use. The tenant agreed he had been using a leaking teapot but he has been using a microwave; he thinks the stove was about 10-12 years old and had come from another unit for it was already very rusty.

The landlord said the tenant also damaged the drywall; it was wallpaper and now has to be dry walled and painted. He does not know the age of the existing wall but the building is about 20 years old. He said the tenant hurt himself as well as damaging the wall and the Police had to be called. The tenant says he does not know how it got damaged.

The landlord says the tenant sometimes acts as if he is intoxicated and comes to his store if he has a problem such as losing his keys; he says he uses bad language which upsets and frightens his wife. He said he has given him verbal and written warnings but he has not changed.

The landlord claims for repairs as follows:

\$291.20 to replace window glass

\$548 to replace the stove

\$525 to repair the drywall and paint.

After discussion, the parties agreed to a move-out date of August 31, 2015 as the landlord expects to receive the Ministry cheque for August rent today or tomorrow. The landlord said he expects the tenant to behave well for the balance of the tenancy.

In evidence are estimates for damages, the Notice to End Tenancy, a warning letter and a complaint letter from another tenant.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession

I find that the landlord is entitled to an Order of Possession. Although the tenant said he had some pictures and evidence, he did not make an Application for Dispute Resolution within 10 days after he was served personally with the Notice to End Tenancy as section 47 of the Act requires; although he said he did not understand this, I find this information is clearly stated on the Notice to End Tenancy that he received. The Tenant has not made application pursuant to Section 47 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. An Order of Possession is issued effective August 31, 2015 as agreed by the parties.

Monetary Order

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find the weight of the evidence is that the tenant or a person permitted on the property by him broke a window. I find the landlord's evidence credible that it was about 5 years old; although the tenant said it had some cracks already, he submitted no evidence in support of his argument and I find it may have had some cracks as it was 5 years old but the tenant's friend broke it. The Residential Policy Guideline 40 provides a useful life for building elements which is designed to account for reasonable wear and tear in rented premises. I find windows are assigned a useful life of 15 years; as this window was 5 years old, I find the landlord entitled to recover 66% of the cost of its replacement or \$194.13.

I find the evidence is that the building is about 20 years old. Although the landlord said the stove was only 4 to 5 years old, he did not provide any original receipts to support this evidence and the tenant said it had come from another unit and was very rusty so much older than the landlord alleges. The landlord claims \$548 to replace the stove. I find the landlord has not met the onus of proving the cost, condition or age of the stove prior to the alleged damage and he provided no evidence of any efforts to repair it which may have mitigated the damage. The Guideline provides for a useful life of only 15 years for stoves and I find insufficient evidence to prove that the stove was less than 15 years old. I dismiss this portion of the landlord's claim.

In respect to the wall damage and repair, I find insufficient evidence of the age of the drywall and wall finishing. The landlord frankly agreed that he had no idea when the wall was last wall papered or painted. Drywall is assigned a useful life of 20 years in the Guidelines and this drywall and finishing may have been at the end of its useful life. I dismiss this portion of the landlord's claim.

Conclusion:

I find the landlord is entitled to an Order of Possession effective August 31, 2015 as agreed and a monetary order as calculated below and to recover filing fees paid for this application. I dismiss the balance of the landlord's claim. I find there is no security deposit.

Calculation of Monetary Award:

Window glass replacement allowance	194.13
Filing fee	50.00
Total Monetary Order to Landlord	244.13

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 28, 2015

Residential Tenancy Branch

