



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ELIZABETH MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MND, MNSD, MNDC, FF

Introduction

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

- an Order of Possession for cause, pursuant to section 55;
- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in satisfaction of the monetary amount requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 30 minutes. The landlord's agent, DS ("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 confirmed that she is the property manager for the landlord company named in this application and that she had authority to represent the landlord company as an agent at this hearing. Witness RG testified on behalf of the landlord at this hearing.

The landlord testified that the tenant was personally served with the landlord's application for dispute resolution hearing package ("Application") on June 7, 2015. Witness RG testified that he witnessed this service. The landlord also provided a copy of a statement signed by the tenant and Witness RG confirming this service. In accordance with section 89 of the *Act*, I find that the tenant was served with the landlord's Application on June 7, 2015.

The landlord confirmed that the landlord's Application was amended on July 14, 2015, in order to seek an additional monetary order of \$73.86 for unpaid utilities. The landlord confirmed that the amended application was served upon the tenant on July 14, 2015 by way of posting to her rental unit door. During the hearing, I advised the landlord that posting to the rental unit door was not permitted by section 89(1) of the *Act* for a monetary application. Accordingly, I advised the landlord that I could not consider the landlord's amended application for an additional \$73.86 at this hearing. I notified the landlord that I could only consider the landlord's original Application seeking \$425.00 from the tenant at this hearing and in my decision. The landlord testified that she did not plan to pursue this utilities claim of \$73.86 against the tenant in the future.

The landlord confirmed that the tenant was personally served with a 1 Month Notice to End Tenancy for Cause, dated May 23, 2015 ("1 Month Notice") on May 24, 2015. Witness RG confirmed that he witnessed this service. In accordance with section 88 of the *Act*, I find that the tenant was served with the 1 Month Notice on May 24, 2015.

Issues to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to a monetary award for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit in satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord confirmed that this tenancy began on May 1, 2015 for a fixed term of one year to end on April 30, 2016. Monthly rent in the amount of \$850.00 is payable on the first day of each month. A security deposit of \$425.00 was paid by the tenant and the landlord continues to retain this deposit. The landlord provided a copy of the written tenancy agreement with its Application. The landlord confirmed that a move-in condition inspection and report were completed on April 20, 2015 but that a move-out condition inspection and report have not yet been completed. The landlord stated that she has not been given a written forwarding address from the tenant.

The landlord stated that the tenant advised the resident manager of the rental building that she would be vacating the rental unit at the end of June 2015. The landlord indicated that she believed the tenant had vacated the rental unit, as no one had seen the tenant since the end of June 2015. The landlord maintained that the tenant left furniture behind, the tenant did not return the rental unit keys and the landlord wants to change the locks to the rental unit. The landlord confirmed that she still requires an order of possession because she is unsure as to whether the tenant has actually vacated the rental unit.

The landlord provided a copy of the 1 Month Notice, which has an effective move-out date of June 30, 2015. The landlord cited the following reasons for the issuance of the 1 Month Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

The landlord stated that she issued the 1 Month Notice because the tenant caused a fire in the rental unit on May 23, 2015, by leaving pizza boxes in the oven. The landlord confirmed that the fire department was called and they responded to the situation. The landlord stated that the tenant advised her that the fire occurred by accident and that she turned the oven on to make food but forgot that she had left pizza boxes in the oven from the night before. The landlord stated that the stove area had to be cleaned, the rental building hallways had to be aired out for smoke, and the stove in the unit had to be replaced. The landlord stated that this fire put the landlord's property at significant risk because it could have spread further into the building. The landlord explained that the rental unit stove and surrounding area was damaged. The landlord stated that other residents in the rental building had breathing problems because of the fire and smoke and that the landlord herself could not re-enter the building because of her asthma problems.

The landlord also seeks to retain the tenant's security deposit of \$425.00 for various damages caused by the fire. The landlord seeks \$250.00 because the stove in the rental unit had to be replaced after it was damaged by the fire. The landlord provided a coloured photograph of the damaged stove with its Application. The landlord stated that a replacement stove was obtained from another rental unit in the building. The landlord

stated that no amount was paid for this replacement stove but that a similar stove was recently bought for another unit in the building and the cost was \$250.00. The landlord did not provide a receipt for that amount.

The landlord seeks \$140.00 to clean the suite after the fire, stating that two workers completed two hours of work each at a rate of \$35.00 per hour. The landlord provided a coloured photograph of the area around the stove that had to be cleaned after the fire. The landlord did not provide a receipt for this amount.

The landlord seeks \$315.00 for a fire service company, "AFPL," to check the fire alarm panel and service the tenant's smoke detector after the fire occurred. The landlord stated that this panel had to be serviced because the tenant complained that her smoke detector was not working at the time of the fire. The landlord stated that there was nothing wrong with the smoke detector, that the fire alarm was activated on the day of the fire and that the fire department responded promptly at that time. The landlord indicated that after the fire department responded to the call at the rental unit, the alarm panel for the whole rental building would not reset. The landlord provided a service invoice for \$315.00 from AFPL. The landlord did not provide a receipt for the paid amount. The invoice indicates that the company charged two hours of time at a rate of \$150.00 per hour plus tax. The invoice states: "labor to provide overtime site service call to investigate fire alarm panel after fire in suite [number], all parameters checked out fine, panel clear and ready to respond to alarms." The landlord provided a copy of a "responsibility notice" which is dated for May 23, 2015 at 12:47 p.m. from the local fire department which indicates "alarm panel will not reset...panel to be serviced immediately..." There is a handwritten notation beside the provision "alarm panel will not reset" indicating that AFPL arrived at 3:32 p.m. and "all working." The landlord confirmed that the panel was serviced "a couple hours" after the fire.

The landlord also seeks to recover the \$50.00 filing fee for this Application from the tenant.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the landlord and witness RG, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings around each are set out below.

1 Month Notice

Where a landlord issues a 1 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. Although the tenant did not appear at this hearing and the landlord did not provide evidence as to whether the tenant disputed this 1 Month Notice, the landlord must still show that the notice was issued for valid reasons.

I find that the landlord did not provide sufficient evidence to justify the three reasons indicated in the 1 Month Notice. I find that the tenant did not intentionally cause the fire in the rental unit, as it occurred accidentally according to the landlord's evidence. I do not find this one-time accidental occurrence to be a "significant interference" or "unreasonable disturbance" to the landlord or other occupants. I similarly do not find it to be a "serious jeopardy" to the health, safety or lawful rights of the landlord or other occupants. The landlord did not provide any medical records to show the health effects of this one fire on the landlord or other occupants. The landlord indicated that the fire department responded promptly and addressed the situation. The landlord indicated that residents evacuated the building and it was aired out. Although the fire caused damage to the stove, it was appropriately contained within a small area and the landlord provided photographic proof of the limited effects of the fire. Therefore, I do not find that the landlord's property was at "significant risk" due to this fire, as it does not appear to have spread to the rest of the building.

Accordingly, the landlord's Application for an order of possession for cause, based on the landlord's 1 Month Notice, dated May 23, 2015, is dismissed without leave to reapply. The landlord's 1 Month Notice is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Damages and Loss

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 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 and show the efforts to minimize the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant caused damage to the rental unit, which entitles the landlord to compensation.

In summary, the landlord must prove the following 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 tenant 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlord's claim for \$250.00 for the replacement stove in the rental unit. The landlord used a stove from another unit. The landlord did not purchase a new stove for this unit. Further, the landlord claimed that she paid \$250.00 for a similar stove recently, but she did not provide a receipt for this amount to demonstrate the cost of the stove. Therefore, the landlord's claim fails part three of the test above, as the landlord did not provide proof of the actual amount required to compensate for the claimed loss.

Similarly, I dismiss the landlord's claim for \$140.00 for the workers to clean the suite after the fire. The landlord did not provide an invoice or receipt for this amount with an explanation of the work done. Therefore, the landlord's claim fails part three of the test above, as the landlord did not provide proof of the actual amount required to compensate for the claimed loss.

I dismiss the landlord's claim for \$315.00 to service the fire alarm panel. The landlord did not provide a paid receipt for this amount, only an invoice for the balance due. The landlord said that the tenant reported that her fire alarm was not working when it actually was, since the fire department responded. However, the landlord's documents from the fire department and AFPL indicate that the panel initially did not work, that it needed servicing and then the company came to service the panel for two hours, after which it began working properly. The records indicate that the alarm panel would not reset at 12:47 p.m. and that the panel was serviced at 3:32 p.m. There is no indication that the tenant caused the alarm panel to malfunction. There appears to have been a problem with the alarm panel as identified by the landlord's documents. Therefore, the landlord's claim fails part two of the test above, as the landlord did not prove that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement.

Accordingly, the landlord is not entitled to retain the tenant's security deposit of \$425.00 for the damages and losses noted above.

As it is unclear whether this tenancy is continuing since the tenant may have already vacated the rental unit, the security deposit is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

As the landlord was unsuccessful in its Application, it is not entitled to recover the \$50.00 filing fee from the tenant.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

The landlord's 1 Month Notice is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: August 07, 2015

Residential Tenancy Branch

