



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF
 CNR, MNDC, RR

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The parties attended the hearing and the landlord was represented by an agent. The landlord's agent and the tenant gave affirmed testimony and the tenant called one witness who gave affirmed testimony. The parties provided evidentiary material prior to the commencement of the hearing to the Residential Tenancy Branch and to each other, and were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing the parties agree that the tenants have moved out of the rental unit and the application of the landlord for an Order of Possession and the application of the tenant for an order cancelling the notice to end the tenancy are both withdrawn.

Also during the course of the hearing, the tenants agreed to pay to the landlord the sum of \$1,150.00 for rent for the month of July, 2015.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue and parking fees?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for recovery of parking fees and incidental expenses?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The landlord's agent testified that the tenancy started on December 13, 2014 on a trial basis because tenant had a dog, then a fixed term tenancy agreement was signed for a tenancy to begin on April 1, 2015 and to expire on March 31, 2016. Rent in the amount of \$1,150.00 per month was payable on the 1st day of each month as well as \$50.00 per month for any vehicles more than 2 parked on the property by the tenants. The landlord did not collect a security deposit from the tenant, but collected a pet damage deposit in the amount of \$575.00 in December, 2014. That deposit was applied to half a month's rent for the beginning of the tenancy; the tenancy wasn't supposed to start until January 1, 2015.

The landlord's agent does not know when the tenant moved out, but the tenant prepared a Mutual Agreement to End the Tenancy effective July 31, 2015. The landlord signed it on May 12, 2015 but changed the move-out date to June 15, 2015. However, the tenants didn't move out and didn't return the mutual agreement. On May 12, 2015 the landlord received a letter from the tenant stating that he had stopped payment on all future rent cheques.

During cross examination the landlord's agent testified that there were moving trucks at the rental unit in April and on a continuous basis through May, June and July. The landlord made an assumption that the tenant left by July 24, 2015 but had no legal right to enter the rental unit and no mutual agreement had been signed. He also testified that the landlord had a letter that the tenants were ending the tenancy, but the landlord did not have the keys.

The tenants bought a home and couldn't move in till end of July, 2015. No rent was paid for June so on June 9 the landlord served the tenants with a 10 Day Notice to End

Tenancy for Unpaid Rent or Utilities. Rent for June was paid by certified cheque in the amount of \$1,200.00 which included parking.

The landlord's agent further testified that the tenant claims loss of services however no services were removed during the tenancy. The landlord gave the tenant a password for his cell phone only, and other services were never included. The tenant could have had his own service for \$60.00 per month, but the tenant took advantage of the temporary courtesy of the landlord. Laundry is only plumbed for cold water, so there has never been hot water for the washing machine. The landlord did not have access to the power to turn off the freezer and denies any responsibility for it. The landlord didn't even know it was there, and if he had, he would have told the tenant not to plug it in outside. Further, the tenant did not worry about mail during the tenancy; it arrived in the landlord's mailbox which was given to him daily, and the landlord was never away longer than 3 days. The landlord also rents a carriage house and there have been no issues about mail with that tenant either.

The rental unit was re-rented for September 1, 2015. The first advertisement was placed on May 30, 2015 and a copy has been provided. The landlord had a few lookers but couldn't show it without police escort due to a booby trap, a spring-loaded metal thing, placed in the door by the tenant.

The landlord claims **\$1,150.00** for rent for July, **\$50.00** for parking for July, and **\$1,150.00** for August for loss of rental revenue.

The tenant testified that the landlord was given notice to end the tenancy by the tenants on May 4, 2015 with a Mutual Agreement to End the Tenancy but didn't receive it back from the landlord.

The tenant agrees that the tenancy agreement did not include internet or cable, but does not agree that the laundry never had hot water; it did at the beginning of the tenancy. Cable was in the rental unit till about mid-May.

The tenant did not booby-trap the door, but put a bobby pin on top of the door because the tenant believed the landlord was going in when the tenants were not home. When the tenants went out of the country in April, they went in and the pin fell.

The tenant denies paying for parking for July because they didn't use more than 2 parking spots. The tenant parked his truck on the street for the month.

The rental unit was not shown to any other prospective tenants during the tenancy, and the tenants gave the landlord 3 months notice to mitigate any loss of revenue for the landlord. The tenant bought a house on May 31, 2015 and took possession on July 24

or 25, but had the tenants received the Mutual Agreement to End the Tenancy changed to June 15, 2015, the tenants would have moved then. The tenant agrees the landlord is owed rent for July and the tenant left a cheque for him, but the tenant does not believe the landlord is owed for August because the landlord had plenty of notice.

The tenant has provided a Monetary Order Worksheet which sets out the tenants claims as against the landlord as follows:

- **\$122.22** for moving expenses;
- **\$450.00** for loss of cable, internet and hot water, estimated at \$50.00 per month;
- **\$200.00** for recovery of parking fees, which the tenant reduces to **\$150.00**; the tenant had parked his bike in the barn at the commencement of the tenancy and over the winter, which the landlord took away, the tenant claims **\$150.00** for April, May and June and has provided a copy of a bank draft payable to the landlord;
- **\$117.00** to transfer mail because the landlord was not providing it regularly;
- **\$150.00** for spoiled food because the landlord r turned off power to the tenant's freezer;
- **\$73.00** for cleaning expenses at move-out;
- **\$25.00** for a service set up fee;
- **\$20.00** for the cost of cancelling rent cheques; and
- **\$50.00** as recovery of the filing fee for the cost of this application.

The tenant's witness is the spouse of the tenant and testified that it's completely untrue that the tenants wanted out of the lease in April; they hadn't bought a house by then.

The witness also testified that the landlord withheld the tenant's mail and took away storage space during the tenancy.

The tenants had agreed to 2 parking spots because the landlord gave them the barn to use for storing the motorbike. Then the landlord locked the barn and the bike had to be parked under the deck.

The landlord refused to talk to the tenants; just took photographs and sent text messages.

Analysis

The parties agree that rent for July, 2015 is owed to the landlord in the amount of **\$1,150.00**, and I so order.

With respect to rent for the month of August, 2015, it is clear in the circumstances that the parties did not mutually agree in writing to end the tenancy earlier than the fixed term. I am also satisfied that both parties would have agreed had they communicated. In order to be successful, the landlord bears the burden of proving mitigation. I have reviewed the advertisements placed by the landlord commencing on May 30, 2015 which continued beyond September 1, 2015 which is when the rental unit was re-rented. The tenants gave notice to end the tenancy on May 6, 2015 effective July 31, 2015. In the circumstances, I find that the landlord has made an appropriate attempt to re-rent the rental unit. I find that the landlord has lost revenue as a result of the tenant's failure to satisfy the term of the tenancy and the landlord has established a claim in the amount of **\$1,150.00**.

With respect to the parking fee for July, the tenant testified that the landlord provided a barn for the bike over the winter and then locked up the barn. The landlord's position is that it was a courtesy over the winter, but in the spring it was no longer available. The landlord does not deny providing the barn, and where a landlord provides a service, whether it's written in the tenancy agreement or not, it cannot be removed by the landlord. The tenant also testified that he parked the bike on the street for the month of July, and there is no evidence to satisfy me otherwise. Where it boils down to one person's word over another, the claim has not been proven, and the landlord's claim of **\$50.00** for parking is dismissed.

With respect to the tenant's claim for recovery of parking fees for 3 months, having found that the landlord removed the facility, I must find that the tenant ought not to have paid the parking for 2 vehicles and the bike, and the tenant has established a claim for **\$150.00**.

I see no evidence whatsoever to satisfy me that the landlord should pay the tenant's moving expenses and the claim of **\$122.22** is dismissed.

I am not satisfied that there ever was hot water to the washing machine, or that the parties agreed that other utilities such as cable or internet were agreed to, and the tenant's application for **\$450.00** is dismissed.

The landlord denies that the tenants ever were without the mail, and the tenant disputes that stating that it was unreliable, however, again where it boils down to one person's word over another the claim has not been proven and the tenant's claim of **\$117.00** is dismissed.

In order to be successful in a claim for damages, the claiming party must establish that the damage or loss exists and that it's a result of the other party's failure to comply with

the *Act* or the tenancy agreement, and the amount of the damage or loss. In this case, the tenants believe the landlord cut the power to the freezer, which the landlord denies even knowing it was there. I have no evidence that there was any food in the freezer, how much it may have been worth or that the landlord caused the food to spoil, and the tenant's application of **\$150.00** for spoiled food is dismissed.

.There is absolutely no evidence to support the tenant's claim for cleaning expenses or the set-up fee or the fee for cancelling rent cheques and the claims of **\$73.00**, **\$25.00** and **\$20.00** respectively are also dismissed.

In summary, I find that the landlord is owed **\$1,150.00** for July rent and **\$1,150.00** for August rent and the tenant is owed **\$150.00** for recovery of parking fees. I set off the amounts, and I hereby grant a monetary order in favour of the landlord for the difference in the amount of **\$2,150.00**. Since both parties have been partially successful with the applications I decline to order that either party recover the filing fees.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to section 67 of the *Residential Tenancy Act* in the amount of **\$2,150.00**. This order is final and binding and may be enforced.

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: September 17, 2015

Residential Tenancy Branch

