



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – OPR, OPC, OPB, MND, MNR, MNDC, FF

For the tenant – MT, CNR, CNC, DRI, LRE, OLC, PSF, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for more time to file an application to cancel a Notice to End Tenancy and applied to cancel a 10 Day Notice to End Tenancy for unpaid rent and a One Month Notice to End Tenancy for Cause; to dispute an additional rent increase; to suspend or set conditions on the landlord's right to enter the rental unit; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to provide services and facilities required by law; and to recover the filing fee from the landlord for the cost of this application.

The landlord applied for Order of Possession for unpaid rent or utilities for an Order of Possession for Cause, for an Order of Possession because the tenant breached an agreement with the landlord; for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

The hearing went ahead as scheduled the landlord dialed into the conference call and was ready to proceed. The line remained open for 10 minutes; however, no one for the tenant dialed into the call. Based on the above I find that the tenant has failed to present the merits of their application and their application is dismissed.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; the first documents were served by registered mail on August 21, 2015 and the amended documents were served to a fax number provided by the tenant on October 09, 2015. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the first hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act* and the amended documents on the third day after they were faxed as per section 90(b) of the *Act*.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord provided copies of the tenancy agreements in documentary evidence and this confirmed the landlord's testimony that this tenancy started on May 01, 2014 for a fixed term of one year and a second tenancy agreement started on May 01, 2015 for a fixed term tenancy due to end on October 31, 2015. Rent for this unit was \$1,300.00 due on the 1st of each month.

The landlord testified that he had applied for a Direct request Proceeding and this was heard on September 15, 2015. The landlord obtained an Order of Possession and a Monetary Order for unpaid rent for August, 2015. The tenant did not vacate the rental unit as ordered and the landlord applied for a writ of possession from Supreme Court. The Court Ordered bailiffs to evict the tenant and this occurred on September 30, 2015.

The landlord testified that as the tenant continued to reside in the rental unit during September, the landlord seeks to recover rent for September of \$1,300.00.

The landlord testified that he advertised the unit on an internet rental site and in the building and the unit was not re-rented until November 01, 2015. The landlord seeks to recover a loss of rent for October of \$1,300.00 as this tenancy was a fixed term until October 31, 2015 and due to the condition the unit was left in which made it un-rentable until the damages were repaired.

The landlord testified that the unit had been newly renovated two years ago. The landlord spent a considerable amount of money renovating the unit. At the end of tenancy the landlord found the tenant had caused significant damage throughout the unit and left the carpets unclean, the unit unclean and many of the tenant's personal belongings and garbage in the unit.

The landlord testified that he hired a handyman to clear the garbage, clean carpets, and make all the repairs. The landlord also completed some work. The landlord referred to his photographic evidence showing the damage and the invoice detailing the handyman's work completed. The landlord seeks to recover the amount of \$2,194.50 for the handyman's work. The landlord testified that the damages consist of the following items:

- Two doors were damaged,
- Toilet mechanism was damaged. This caused flooding to unit below and damage to that unit's ceiling,

- Walls and baseboards were damaged,
- Flooring was scratched,
- Damage inside closet,
- Door trim was damaged,
- Light fixture was damaged and blubs burnt out,
- Curtains were in place at all windows and had been removed by tenant,
- Two kitchen cupboard handles were damaged,
- Damage to the laminate counter top, tenant had applied some sort of chemical which damaged the surface,
- Finish on the interior of kitchen cabinets was damaged,
- Grout in tiles around the bathtub were left black and one tile was cracked causing water to leak behind bathtub,
- Carpets were not cleaned and left stained and dirty.

The landlord testified that after he received an Order of Possession for the rental unit the tenant did not vacate in accordance with that Order and the landlord had to pay for bailiffs to evict the tenant. The landlord also suffered costs incurred to enforce the Order of Possession in the Supreme Court. The landlord seeks to recover the following amounts and has provided receipts in documentary evidence:

Fees for the Bailiffs - \$1,581.26

Fees incurred for notarizing documents for Supreme Court - \$60.00

Supreme Court fees - \$80.00

Postage of documents by registered mail - \$22.95

The landlord testified that the tenant caused many noise disturbances in the building and violated the Strata bylaws continually with both noise disturbances and with balcony infractions. The landlord has been fined a total amount of 700.00 in Strata fines dating from May 16, 2014 to September 17, 2015. The landlord was also fined \$100.00 by the Strata as they had to clean up garbage left in the party room after the tenant had hired the room. The landlord seeks to recover \$800.00 for these fines and has provided all

relevant documentation from the Strata concerning these issues in documentary evidence.

In addition to this the landlord has been charged an amount of \$304.50 by the Strata to have the unit repaired downstairs due to the tenant's damage to the toilet mechanism which caused a flood in the downstairs unit. The landlord has provided the letter and invoice for this work in documentary evidence.

The landlord also seeks to recover his filing fee paid for this proceeding of \$100.00.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing and despite having filed her own application to be heard today; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's documentary evidence and sworn testimony before me.

With regard to the landlord's claim for unpaid rent; I refer the parties to s. 26 of the *Act* which states:

26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied from the evidence before me that the tenant continued to reside in the rental unit until September 30, 2015 and failed to pay rent for this month. Consequently, I find the landlord has established a claim to recover unpaid rent for September, 2015 of **\$1,300.00.**

With regard to the landlord's claim for a loss of rent for October, 2015; this was a fixed term tenancy and as such the tenant is responsible for the rent until the tenancy can be legally ended on October 31, 2015. This means that even if the tenant was evicted from the rental unit, if the landlord is unable to re-rent that unit for any period up to the end of the tenancy, the tenant remains responsible for any loss of rent up to October 31, 2015. I am satisfied the landlord attempted to mitigate the loss by advertising the unit and that the unit was not rented for October, 2015. Therefore, I find the landlord is entitled to recover the amount of **\$1,300.00** as a loss of rent for October from the tenant.

With regard to the landlord's claim for damage to the rental unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I have considered the undisputed testimony of the landlord that the unit had been newly renovated approximately two years ago. The landlord has

provided compelling documentary evidence showing the damages that occurred in the unit. I can only conclude that these damages were caused by the tenant or a person permitted on the property by the tenant and were not repaired at the end of the tenancy as required under s. 32(3) of the *Act*. Furthermore, I am satisfied that the landlord has provided evidence showing the actual cost of the repairs claimed and mitigated the loss by doing some minor work himself. Consequently, I uphold the landlord's claim to recover **\$2,194.50** from the tenant.

With regard to the landlord's claim for costs incurred to obtain a writ of Possession and to have the tenant evicted from the rental unit. If the tenant had willingly vacated the rental unit in compliance with the Order of Possession issued to the landlord and duly served upon the tenant, then the landlord would not have incurred these additional costs. I therefore find the landlord has established a claim to recover court fees of **\$80.00**, fees to notarize documents of **\$60.00** and bailiff fees of **\$1,581.26**. The landlord is not entitled to recover costs to send documents by registered mail as there is no provision under the *Act* for costs of this nature to be awarded to a party.

With regard to the landlord's claim for Strata fines and repair costs; the landlord has provided documentary evidence showing all infractions caused by the tenant against the Strata bylaws and letters concerning fines made against the landlord for noise disturbances, balcony infractions, cleaning up of the party room and repairs made to the unit below due to the water leak from the tenant's unit. I am satisfied with the undisputed evidence before me that the landlord has incurred costs of **\$1,104.50** to the Strata because of the tenant's actions and neglect and I award this amount to the landlord.

As the landlord's claim has merit I find the landlord is entitled to recover the filing fee of **\$100.00** from the tenant pursuant to s. 72(1) of the *Act*.

Conclusion

I hereby issue a Monetary Order in the landlord's favor in the amount of \$7,720.26 pursuant to s. 67 and 72(1) of the *Act* under the following terms:

Item	Amount
Unpaid rent for September	\$1,300.00
Loss of rent for October	\$1,300.00
Damage to the unit	\$2,194.50
Fees incurred to evict the tenant	\$1,721.26
Strata fines and charges	\$1,104.50
Recover Filing Fee	\$100.00
Total Monetary Order	\$7,720.26

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

The tenant's application is dismissed without leave to reapply..

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: October 28, 2015

Residential Tenancy Branch

