



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNDC MNSD FF
 CNC FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed on November 02, 2015, seeking an Order of Possession for cause and a Monetary Order for: monetary owed or compensation for damage or loss; to keep the security and or pet deposits; and to recover the cost of the filing fee from the Tenants for this application. The Landlord amended their application on December 07, 2015 to withdraw their request for an Order of Possession and to proceed with their application for loss of November rent for the upper and lower rental units and unpaid utilities.

The Tenants filed on October 23, 2015, seeking an Order to cancel the 1 Month Notice to end tenancy for cause and to recover the cost of their filing fee from the Landlord.

Service of the Landlord's initial application and hearing documents was done in accordance with section 89 of the *Act* as they were personally served upon the Tenants on November 3rd, 2015.

On December 07, 2015 the Landlord submitted an amended application along with 51 pages of evidence to the Residential Tenancy Branch. The Landlord testified that he was not able to serve the Tenants with the amended application or his evidence as they vacated the property on or before November 9, 2015 and refused to give him a forwarding address.

Rule of Procedure 3.14 provides that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the RTB not less than 14 days before the hearing.

Rule of Procedure 3.17 provides that the Arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the requirements set out in the Rules of Procedure.

In this case the Landlord filed his application November 2, 2015, and amended the application and submitted evidence on December 7, 2015. The amended application and evidence was not served upon the Tenants in accordance with Rule of Procedure 3.14. Therefore, I will not consider the amended application or the documentary evidence as the Tenants have not been served them; and therefore, the Tenants would not have been able to prepare a defense, pursuant to Rule of Procedure 3.14. I did however, consider the Landlord's oral submissions.

The Landlord confirmed receipt of the Tenants' application and notice of hearing documents. However, no one appeared at the teleconference hearing on behalf of the Tenants; despite the Tenants being served with notice of the Landlord's application and despite having their own application for dispute resolution scheduled for the same hearing date and time. Accordingly, I proceeded in the absence of the Tenants.

Issue(s) to be Decided

1. Has the Landlord regained possession of the rental unit?
2. Has the Landlord proven entitlement to monetary compensation?
3. Should the Tenants' application be dismissed?

Background and Evidence

The Landlord testified that the Tenants entered into a fixed term tenancy agreement that began on July 15, 2014 and switched to a month to month tenancy after July 14, 2015. Rent of \$825.00 was payable on or before the first of each month. On July 11, 2014 the Tenants paid \$412.00 as the security deposit plus \$100.00 as the pet deposit.

The tenancy agreement initially required the Tenants to pay 50% of the hydro and the upper tenants were required to pay 50% of the hydro. The Tenants brought in an additional occupant to reside with them so effective May 2015 the Tenants mutually agreed to pay 60% of the hydro and the upper tenants were required to pay 40% of the hydro bill.

On October 20, 2015 the Landlord served the Tenants a 1 Month Notice to end tenancy for cause. When the Tenants failed to pay their \$825.00 November 2015 rent the Landlord served them a 10 Day Notice to end tenancy on November 2, 2015. The Landlord filed a second application through the Direct Request Process and was granted an Order of Possession on November 18, 2015. The Landlord withdrew his request for an Order of Possession from this application.

The Tenants vacated the rental unit as of November 9, 2015 and did not pay the last hydro bill. The Landlord was not able to re-rent the unit until December 1, 2015. As a

result the Landlord requested compensation for the unpaid November rent of \$825.00 plus the unpaid hydro fees up to October 31, 2015 of \$49.09.

The Landlord stated that he had also applied to recover loss of rent for the upper unit for November 2015. He argued that the upstairs tenant moved out of the unit on short notice because the downstairs Tenants were smoking marijuana in the rental unit. He argued that there was a strict no smoking policy and it was the Tenants' actions that caused his upper tenants to move out.

There was no evidence submitted in support of the Tenant's application, as no one was in attendance on behalf of the Tenant.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 26 of the Act stipulates, in part, that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

I accept the undisputed evidence that the Tenants failed to pay their November 1, 2015 rent. The Tenants vacated the unit on November 9, 2015 after receipt of the 10 Day

Notice causing the Landlord to suffer a loss of rent for the entire month of November 2015. The Landlord took reasonable actions to re-rent the unit as soon as possible.

Based on the above, I find the Landlord submitted sufficient evidence to prove entitlement for compensation of unpaid and loss of rent of the entire month of November 2015. Accordingly, I grant him compensation in the amount of **\$825.00**, pursuant to section 67 of the *Act*.

The Tenants mutually agreed to share the cost of the hydro utilities with the upstairs tenants at a ratio of 60% to 40%. I accept the undisputed evidence that the Tenants failed to pay the hydro bill for usage up to October 31, 2015. Accordingly, I grant the Landlord's claim in the amount of **\$49.09**, pursuant to section 67 of the *Act*.

In absence of documentary evidence that could be considered in this matter; I find the Landlord was seeking compensation for a loss that may have been significantly linked to the upstairs tenant. Therefore, given the circumstances presented to me during this hearing, I dismissed the Landlord's claim for loss of rent for the upstairs rental unit, with leave to reapply.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

Monetary Order - This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid & Loss of November 2015 Rent	\$ 825.00
Unpaid Hydro to October 31, 2015	49.09
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 924.09
LESS: Pet Deposit \$100.00 + Interest \$0.00	-100.00
LESS: Security Deposit \$412.00 + Interest \$0.00	<u>-412.00</u>
Offset amount due to the Landlord	<u>\$ 412.09</u>

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenants, the telephone line remained open while the phone system was monitored for nineteen minutes and no one on behalf of the applicant Tenants called into the hearing during this time. Accordingly, in the absence of any submissions from the applicant Tenants, I order the Tenants' application dismissed, without liberty to reapply.

Conclusion

The Landlord was primarily successful with their application and was granted monetary compensation in the amount of \$924.09. That compensation was offset against the Tenants' security and pet deposits leaving a balance owed to the Landlord of **\$412.09**. The Landlord's request for loss of rent for the upstairs rental unit was dismissed, with leave to reapply.

The Landlord has been issued a Monetary Order in the amount of **\$412.09**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with Small Claims Court and enforced as an Order of that Court.

The Tenants did not appear and their application was 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: December 29, 2015

Residential Tenancy Branch

