



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNR, O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act"). The landlord applied for a monetary order for unpaid rent, litigation fees, cleaning and the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Preliminary Issue

The tenants raised the issue of the landlord not serving them the hearing package within 3 days as outlined in Section 59(3) of the Act. The tenants stated that they would have liked to have had more time to prepare for this hearing. The landlord stated that she was not given any direction by the Information Officer at the Branch as to how or when she was to serve the respondents. The landlord stated that she served the tenants the Notice of Hearing package on February 1, 2016.

The Act does not state a penalty for non-compliance if the applicant does not serve the respondent with the Notice of Hearing Package within 3 days as outlined in Section 59(3). This leaves the Arbitrator with the question of would the respondent be prejudiced if the hearing were to proceed on this date? This is now the fourth Branch application involving these two parties and the third one that discusses whether rent was payable or not and the condition of the unit. The tenants have submitted extensive evidence to argue against the landlords claim. In addition, the tenants have been aware of the claims of the landlord since June 2015. After considering the submissions of both parties I find that the tenants have not been prejudiced by the landlords delay in serving them the Notice of Hearing Package and the hearing proceeded and completed on this date and on that basis.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The landlord gave the following testimony. The tenancy began on or about July 1, 2015 and ended on July 25, 2015. Rent in the amount of \$900.00 is payable in advance on the first day of each month. The landlord stated that the tenants ended the tenancy without proper notice and that the parties came to dispute the condition of the unit. The landlord stated that she and the tenant agreed that the tenant would move into the unit once the landlord completed the renovations. The landlord stated she allowed the tenant to store some personal belongings in the unit prior to completion. The landlord stated that the tenant took possession of the unit without her permission, provided post-dated cheques, but then later cancelled the first months' rent cheque.

The landlord stated that the tenant vacated on July 25, 2015 without any notice. The landlord stated that she had to clean the unit and made attempts to re-rent the unit as soon as she could, but to no avail. The landlord stated that she paid a cleaner \$150.00 to make the unit rentable again. The landlord stated that she was unable to rent the unit for August and that she was finally successful in securing a tenant for September 1, 2015.

The landlord stated that she is also seeking "aggravated damages" in the form of her litigation costs, they are; legal fees in the amount of \$4435.00, disbursements for affidavits \$143.50, registered mail \$10.50 and the review application at the Branch for \$25.00. The landlord stated that because the tenant has conducted herself in a fraudulent manner as proven by the decisions in the previous hearings, the landlord should be entitled to these costs.

The landlord is applying for the following:

1.	Unpaid Rent for July and Loss of Revenue August	\$1800.00
2.	Cleaning Charges	\$150.00
3.	Obtaining Affidavit Evidence from K.Westlake	\$4435.00
4.	Disbursements for Affidavits	\$143.50
5.	Registered Mail Receipts	\$10.50
6.	Review Application	\$25.00
7.	Filing Fee	\$100.00
	Total	\$6664.00

The tenant gave the following testimony. The tenant stated that she left the unit in better condition than when she got it and that it was also much cleaner than when she got it. The tenant stated that she doesn't feel that she should be responsible for the loss of revenue for August as she moved out on July 25, 2015. The tenant stated that the landlord should have known that she was going to move out because she served her a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant stated that it was the landlords' choice to hire a lawyer and that she shouldn't be held responsible for the landlords' choice.

Analysis

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/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. I address the landlords' claims and my findings as follows.

1. Unpaid Rent and Loss of Revenue \$1800.00.

Section 26 of the Act addresses this issue as follows:

26 (1) 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.

In the tenants own testimony she acknowledged that she didn't pay rent and that she left the unit without advising the landlord. The landlord made all reasonable attempts to rent as quickly as she could. Due to the tenants refusal to pay the July rent and the lack of notice when she was to vacate, restricted the landlord's ability to mitigate her losses. After considering all the evidence before me I find that the landlord is entitled to the unpaid rent for July and the loss of revenue for August for a total of \$1800.00.

2. Cleaning \$150.00.

Residential Tenancy Policy Guideline 1 states that a tenant must leave their suite reasonably clean at the end of their tenancy. The landlord submitted a receipt and a sworn affidavit from the cleaner verifying that she did in fact clean the unit as stated by the landlord. The landlord has satisfied me on a balance of probabilities of this claim and she is entitled to \$150.00.

3. Obtaining Affidavit Evidence from K.Westlake - \$4435.00, Disbursements for Affidavits - \$143.50 Registered Mail Receipts - \$10.50, Review Application - \$25.00.

The landlord is relying on the Review Consideration Decision that she was successful in being granted the review hearing. The landlord states that the Branch has verified that she has proven the tenant obtained the original decision and order by fraud. The landlord feels that this what justifies her position that litigation fees would fall under aggravated damages as a result of the tenants actions.

The tenant stated that she did not commit fraud and that the two parties have a different view of what transpired.

I do not agree with the landlords' presumption that she has confirmation from the Branch that the tenant committed fraud. The Arbitrator conducting the review noted that the tenant may not have presented some facts as they may be. This does not constitute proven fraud. In addition,

the Arbitrator at the subsequent review hearing made findings of fact after hearing both parties. The Arbitrator was silent in terms of finding any fraudulent behaviour or act by the tenant. The landlord has failed to provide sufficient evidence that there was conclusive proof of fraud. I find that these costs are not classified as “aggravated costs” but those of litigating ones case.

The legislation does not permit me to award any litigation related costs other than the filing fee and accordingly I dismiss this portion of the landlords’ application.

As for the monetary order, I find that the landlord has established a claim for \$1950.00. The landlord is also entitled to recovery of the \$100.00 filing fee. I grant the landlord an order under section 67 for the balance due of \$2050.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$2050.00.

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: March 01, 2016

Residential Tenancy Branch

