



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMPLETE RESIDENTIAL PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MND, MNR, MNSD, FF

Introduction

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

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent, and for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1346 in order to enable the tenant to connect with this teleconference hearing scheduled for 1300. The landlord's agents attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent SE testified that the landlord served the tenant with the dispute resolution package (including all evidence before me) on 20 November 2015 by registered mail. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Preliminary Issue – Scope of Application

This tenancy was the subject of an earlier application for dispute resolution by the landlord. In that application, the landlord applied for monetary compensation for the cost of pest control treatments, which were necessary because of the tenant's failure to keep the rental unit a state that complied with subsection 32(2) of the Act.

The landlord was successful in that application. The arbitrator awarded the landlord \$824.25 as the cost of treating the building for cockroaches as well as the \$50.00 filing fee paid. The landlord was provided a monetary order for that amount. The tenant has not satisfied that monetary order.

The landlord reapplies for that compensation in this application.

Res judicata is the legal doctrine preventing, among others, the rehearing of an issue that has been previously settled by a judicial decision. There are three elements to this doctrine:

- an earlier binding decision has been made on the issue,
- a final judgment on the merits has been made, and
- the involvement of the same parties.

In this case, there is a final and binding earlier decision between these parties on the issue of compensation for the pest control and recovery of the first filing fee. I cannot rehear these matters and the landlord is in possession of a monetary order for the full amount. Accordingly, I decline to reconsider the issue of the pest control costs and prior filing fee as they have already been adjudicated.

The landlord applies for an order of possession on the basis of the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). The agents confirmed that the tenant vacated the rental unit on or about 10 November 2015.

As the tenant has returned possession of the rental unit to the landlord, there is no need for me to consider the landlord's application for an order of possession as the issue is now moot.

As such, I decline to proceed with that portion of the landlord's claim.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit and pet damage deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agents, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The tenancy began 15 December 2005 and ended 31 October 2015 pursuant to a 1 Month Notice. The tenant vacated the rental unit 10 November 2015. Monthly rent at the end of the tenancy was \$550.00. The landlord continues to hold the tenant's security deposit in the amount of \$275.00 and pet damage deposit in the amount of \$200.00, both of which were collected at the beginning of the tenancy.

On 25 August 2015, the landlord served the tenant with a copy of the monetary order dated 18 August 2016. The letter demanded payment on or before 11 September 2015. The covering letter noted that if the tenant failed to pay that amount, the landlord would issue a 1 Month Notice.

On 16 September 2015, the landlord issued the 1 Month Notice; however, the covering letter provided that the landlord would withdraw the notice if the tenant satisfied the monetary order on or before 28 September 2015. The tenant did not satisfy the order.

On 16 September 2015, the landlord issued the 1 Month Notice. The 1 Month Notice was dated 16 September 2015 and set out an effective date of 31 October 2015. The 1 Month Notice set out that it was given as the tenant had failed to comply with an order issued under the Act within thirty days of receiving the order or the date in the order.

The landlord provided a copy of a cleaning invoice dated 13 November 2015 in the amount of \$712.43. The invoice was for ten hours of labour for removing contaminated debris from the rental unit and dumping the contaminated materials.

The agent WA testified that all of the flooring, blinds and baseboards had to be removed in order to decontaminate the rental unit. The agent WA testified that it did not appear

that the tenant had made any effort to clean the rental unit. The agent WA testified that there was damage from cigarette smoke and the tenant's dog in the rental unit.

Analysis

Pursuant to section 57 of the Act, a landlord may make a claim for compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit.

Pursuant to the 1 Month Notice, this tenancy ended 31 October 2015. As such, the landlord was not entitled to "rent", but was entitled to compensation for the tenant's use and occupancy of the rental unit. In this case the tenant occupied the rental unit until 10 November 2015. The landlord was entitled to compensation in the amount of \$235.33 (\$706.00/30*10). I find that the landlord has proven its entitlement to this amount. The tenant contributed \$706.00 towards his use and occupancy of the rental unit in November.

The landlord applies for \$600.00 for cleaning costs.

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. *Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. ...

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

On the basis of the sworn and uncontested testimony of the landlord's agents, I find that the condition of the rental unit at the end of the tenancy constituted a breach of the tenant's obligations pursuant to subsection 37(2) of the Act. In particular, the tenant's smoking and pet caused damage to the rental unit. The landlord set out that cost of

remediating the damage was the cost of removing the damaged flooring, baseboards, and window coverings. On the basis of the sworn and uncontested evidence of the landlord, I find that as a result of the tenant's breach of subsection 37(2) of the Act, the landlord incurred costs of repairs totaling \$712.43. The landlord is entitled to the full amount of its claim of \$600.00.

As the landlord has been successful in this application, I find that the landlord is entitled to recover the filing fee it paid from the tenant.

The landlord applied to retain the tenant's security deposit and pet damage deposit.

Pursuant to paragraph 72(2)(b) of the Act, the if an arbitrator orders a party to a dispute resolution proceeding to pay any amount to the other the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

At the end of the tenancy, there was an outstanding order of the Residential Tenancy Branch in the amount of \$874.25. Applying the offsetting provisions of paragraph 72(2)(b) of the Act, the landlord was entitled to apply the security deposit in the amount of \$284.73 (\$275.00 + \$9.73 interest payable) and the pet damage deposit in the amount of \$207.07 (\$200.00 + \$7.07 interest payable) to these outstanding amounts. This left a total unsatisfied prior monetary order in the amount of \$382.45. As there is no amount for the pet damage deposit or security deposit outstanding at the time the landlord made this application, I cannot re-award that amount to the landlord.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$179.33 under the following terms:

| Item | Amount |
|---------------------------------------------|-----------------|
| Use and Occupancy November | \$235.33 |
| Use and Occupancy Payment | -706.00 |
| Cleaning | 600.00 |
| Recovery of Filing Fee for this Application | 50.00 |
| Total Monetary Order | \$179.33 |

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 20, 2016

Residential Tenancy Branch