



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNSD, MNR, MND, MNDC, FF

Introduction

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

- an order of possession for unpaid rent pursuant to section 55;
- an order of possession for breach of an agreement with the landlord, pursuant to section 55;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord and tenant along with the tenant's agent, JM (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the application.

Preliminary Issue – Late Evidence

The landlord testified that on July 23, 2016 he forwarded a 22 page evidence package via registered mail to the tenant. The landlord provided a Canada Post receipt and tracking number as proof of service. The tenant disputed receiving this evidence package. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the evidence package on July 28, 2016, the fifth day after its registered mailing.

Rule 3.14 of the RTB *Rules of Procedure* establishes that documentary evidence must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. If the evidence is received following this timeline, the evidence may or may not be considered depending on whether the applicant can prove this evidence was new and relevant evidence that was unavailable at the time this application was made. The evidence package was deemed served just five days prior to the hearing and the landlord did not show this evidence was new and unavailable at the time the application was made. For these reasons, I have not relied on the landlords 22 page evidence package to form any part of my decision.

It should be noted that although I am not relying on the 22 page evidence package submitted by the landlord I am relying on the 77 page evidence package submitted by the tenant that includes copies of the evidence the tenant received from the landlord.

Preliminary Issue – Order of Possession

At the outset of the hearing the parties testified that the tenant no longer resided in the rental unit. Consequently, the landlord is no longer seeking an order of possession and this portion of the landlord's application is dismissed without leave to reapply.

Preliminary Issue – Security Deposit

The return of the security deposit was addressed in a previous Decision issued by the Branch on May 27, 2016. The Arbitrator in this hearing determined that because the landlord had not applied for dispute resolution or returned the security deposit within the required 15 days the tenant was entitled to double the value of the security deposit. A monetary order was issued and as testified by the tenant, served to the landlord. For these reasons, I dismiss the landlord's application to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested without leave to reapply.

For ease of reference, the file number for this previous hearing is set out on the front page of this decision.

Preliminary Issue – Monetary Order

The tenant testified that two Decisions, issued November 3, 2015 and January 12, 2016 already addressed the landlord's application for a monetary order. In reviewing these decisions I found that the landlord did previously apply for a monetary order for unpaid rent/utilities and for money owed or compensation for damage or loss. On November 3, 2015, the Arbitrator in this hearing adjourned the landlord's application for a monetary order to allow the landlord to re-serve the application for dispute resolution and evidence package. At the adjourned hearing of January 12, 2016, the Arbitrator determined that the landlord had not re-served the dispute resolution and evidence package and dismissed the landlord's application with leave to reapply. For this

reason, I accept the landlord's application for a monetary order and have addressed the landlord's application in the analysis and conclusion sections of this decision, below.

For ease of reference, the file numbers for these previous hearings are set out on the front page of this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the unit?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the submitted tenancy agreement, the tenancy began on September 1, 2014 on a fixed term until April 1, 2015 at which time it continued on a month-to-month basis. Both parties agreed a condition inspection report was not conducted at the start or end of tenancy. Rent in the amount of \$750.00 was payable on the first of each month.

On an undisclosed date the landlord provided written notice to all tenants that locks would be changed effective September 15, 2016 and that only authorized tenants would be issued a new key. The tenant did not retrieve or receive a new key.

A 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was served to the tenant on September 9, 2015. This 10 Day Notice was the subject of a Residential Tenancy Branch hearing held on November 3, 2015. The Arbitrator in this hearing determined that the 10 Day Notice did not comply with the provisions of section 52 of the *Act*, and set the 10 Day Notice aside. The file number for this hearing is listed on the front page of this decision.

Despite the 10 Day Notice being set aside, on November 15, 2015, the landlord moved the tenant's belongings from the rental unit to a storage facility.

Landlord

It is the landlord's position that the tenant has not lived in the rental unit since September 1, 2015 and as a result, the tenant did not retrieve a key following the lock change.

The landlord alleged that the tenant had assigned or sublet the rental unit without the consent of the landlord. Specifically the tenant assigned the rental unit to the tenant's agent and tenant's father. In order to mitigate his losses and re-rent the unit to an authorized tenant the landlord removed all items in the rental unit and placed them in storage.

The landlord seeks a total of \$9,475.84 in damages.

Rent

The landlord seeks a monetary order of \$4,500.00 for unpaid rent from September 1, 2015 to February 1, 2016. The landlord claimed that the rental unit was re-rented to a new tenant effective March 1, 2016.

Moving Costs and Storage Fees

The landlord seeks \$275.00 for moving costs and \$2,610.55 for storage fees from November 2015 to May 2016. The tenant submitted a copy of the moving invoice that the landlord received. The tenant submitted copies of the storage receipts as received by the landlord.

Smoke and Fire Alarm

The landlord testified that despite the no smoking clause in the tenancy agreement, the tenant or the assigned tenant smoked within the rental unit. The landlord alleged the tenant or assigned tenant disconnected the smoke and fire alarm. The landlord incurred a repair bill in the amount of \$191.58 and seeks to recover this cost from the tenant. The tenant submitted a copy of the repair bill that the landlord received.

Painting

The landlord testified that because of the smoking, the rental unit required repainting. The landlord seeks to recover the cost of the paint in the amount of \$247.67. The tenant submitted a copy of the painting invoice that the landlord received.

Bathroom Tile

The landlord indicated that the bathroom tile was damaged and required repair. The landlord purchased tile in the amount of \$359.55 and seeks to recover this cost from the tenant. The tenant submitted a copy of the bathroom tile bill that the landlord received. The landlord paid a contractor \$1,000.00 to repair the bathroom tile and paint the rental unit. The landlord seeks to recover this cost from the tenant. The tenant provided a copy of the install invoice that the landlord received.

Floor Strip

The landlord replaced a floor transition strip and seeks to recover this cost of \$66.49 from the tenant. The tenant provided a copy of the floor transition strip receipt that the landlord received.

Filing Fees

The landlord seeks to recover filing fees in the amount of \$225.00 from the tenant. These filing fees include fees paid for previous applications.

Tenant

The agent indicated that the tenant was locked out of the rental unit on September 15, 2016 and hence rent was not paid from September 1, 2015 to February 1, 2016. The tenant did not initiate or approve the moving of his goods and only learned items were placed in storage during the January 12, 2016 hearing.

The agent testified that there were no initials confirming the no smoking clause in the tenancy agreement. The agent also testified that the smoke and fire alarm were not disabled. Contrary to the agent's testimony, the tenant testified that the smoke alarm was disabled and smoking was conducted in the rental unit. The tenant was uncertain about the bathroom tile or transition strip and estimated this damage may have occurred prior to his tenancy.

Analysis

In respect to a monetary claim for damages or for a monetary loss to be successful an applicant must satisfy the test prescribed by Section 7 of the Act. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the Act. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Rent

Section 26 of the *Act* establishes that a tenant is obligated to pay rent on the date indicated in the tenancy agreement. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the landlord proved that the current rent for this unit is \$750.00. Based on the tenant's own admission that September rent was not paid, I find the landlord is entitled to **\$750.00 in rent**. In relation to the landlord's claim for October, November, December, January and February rent, I find the landlord provided insufficient evidence to show that he mitigated his losses in a manner consistent with the *Act*, and therefore dismiss this portion of the landlord's claim without leave to reapply.

Moving Costs and Storage Fees

In relation to the landlord's claim for reimbursement of moving costs and storage fees, I find these costs were not a direct result of the tenant's actions in violation of the *Act*, but rather these costs were a direct result of the landlord's contravention of the *Act*. Under the *Residential Tenancy Act*, the landlord had legitimate recourse available to him regarding the alleged illegal sublet. Contrary to his 10 Day Notice being set aside and in the absence of an order of possession, the landlord unlawfully took possession of the rental unit by removing the tenant's belongings. For this reason I dismiss the landlord's application to recover the moving costs and storage fees.

Smoke and Fire Alarm

Based on the tenant's admission that the smoke alarm was disabled I find the landlord is entitled to the recovery of **\$191.58 paid for the reconnection.**

Painting

As per the *Residential Tenancy Policy Guideline* ("RT Policy Guideline") the landlord is responsible for painting the interior of the rental unit at reasonable intervals; however the *RT Policy Guideline* also states that a tenant is responsible for all deliberate or negligent damage to the walls. I find that the landlord provided insufficient evidence to show the specific result smoking had on the painted walls however because the tenant acknowledged smoking in the rental unit I grant the landlord a **nominal award of \$100.00.**

Bathroom Tile

In the absence of a condition report indicting the state of the bathroom tile at move in, I find the landlord cannot substantiate that any bathroom tile damage was a direct result of this tenancy. For this reason I do not find the landlord is entitled to any compensation for the bathroom tile work and dismiss this portion of the landlord's application.

Floor Strip

In the absence of a condition report indicting the state of the floor transition strip at move in, I find the landlord cannot substantiate that any floor transition strip damage was a direct result of this tenancy. For this reason I do not find the landlord is entitled to any compensation for the floor transition strip.

Filing Fees

As the filing fees paid for previous applications were addressed in those previously issued Decisions, I dismiss this portion of the landlord's claim. As the landlord was partially successful in this application, I find that the landlord is entitled to recover **\$50.00** of the \$100.00 filing fee paid for a **total award of \$1,091.58.**

Conclusion

I dismiss the landlord's application for an order of possession for unpaid rent and breach of an agreement with the landlord without leave to reapply.

I dismiss the landlord's application to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested without leave to reapply.

I dismiss the landlord's application for a monetary order for October, November, December, January and February rent without leave to reapply.

I dismiss the landlord's application for a monetary order for moving costs and storage fees without leave to reapply.

I dismiss the landlord's application for a monetary order for bathroom tile work without leave to reapply.

I dismiss the landlord's application for a monetary order for the floor transition without leave to reapply.

I dismiss the landlord's application for a monetary order for filing fees in relation to past applications without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of **\$1,091.58**.

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: August 30, 2016

Residential Tenancy Branch