



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Argus Homes Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord and the tenant.

Res judicata is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgment on the merits has been made; and the involvement of the same parties.

I note that a portion of the landlord's claim is for the filing fee of a previous hearing. From that decision, written on September 17, 2015 I note that the landlord was awarded \$50.00 for that filing fee and ordered to deduct it from the security deposit held. As such, I find that the matter has already been adjudicated and is therefore considered *res judicata*.

I make no findings on that issue, however, I do note that the security deposit, as it relates to this claim, based on the September 17, 2015 decision, is \$50.00 less than originally collected by the landlord. I dismiss this portion of the landlord's claim.

I also clarified with the landlord that their total claim amount calculations were inaccurate on one part of their claim due to an arithmetic error. The landlord agreed their claim should be reduced by \$168.76.

At the outset of the hearing the tenant requested an adjournment. The tenant submitted that he had received the landlord's Application for Dispute Resolution sometime in January 2016 and that he was intentionally waiting to submit his evidence until as close as possible to the hearing date so that the materials would be fresh for him when it came time to participate in the hearing.

He stated that he unexpectedly entered a treatment centre where he was not able to follow through on the service of his evidence until he left the treatment centre just before the hearing date and then it was too late to do so.

Residential Tenancy Branch Rule of Procedure 3.15 states, in part, a respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch **as soon as possible**. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing. Rule of Procedure 3.11 states that evidence must be served and submitted **as soon as reasonably possible**. [Emphases added].

Despite the tenant's submissions of his inability, over the summer, to be able to serve his evidence, I am not satisfied that the tenant could not have submitted his evidence at the time he received the landlord's hearing package or shortly thereafter. I find the tenant has provided no valid reason to delay submissions when the Rules of Procedure clearly require the evidence to be submitted as soon as it is available.

Rule of Procedure 7.9 sets out the criteria for granting an adjournment. It states that without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party.

Upon consideration of the tenant's submission I find the need for the adjournment sought by the tenant is solely because of his neglect to submit his evidence in accordance with the Rules of Procedure. I find the tenant has provided nothing to substantiate that his evidence would contribute to the resolution of these matters.

I find the tenant has been provided with ample to time to submit any evidence he intended to rely upon and the tenant was in attendance at the hearing to provide response and rebuttal to the landlord's claims. As such, I find the tenant has already been provided with a fair opportunity to be heard and that an adjournment would not enhance that.

For these reasons, I declined to grant the tenant an adjournment of these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for overholding; lost revenue; compensation for damages and losses suffered as a result of the tenancy; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord has submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties for a 1 year fixed term tenancy beginning on November 1, 2014 for a monthly rent of \$970.00 due on the 1st of each month with a security deposit of \$485.00 paid. I note there is an addendum to the tenancy agreement that stipulates the tenant agreed to have drapes professionally cleaned at the end of the tenancy;
- A copy of a Condition Inspection Report recording the condition of the rental unit at the start and the end of the tenancy. I note the tenant signed the report agreeing to the condition at the start of the tenancy but did not participate in the move condition inspection; and
- Invoices and receipts for various costs as noted in the table below.

The landlord submitted the tenant failed to vacate the rental unit in accordance with a 1 Month Notice to End Tenancy for Cause and he obtained an Order of Possession as per the September 17, 2015 decision. The landlord also submitted that a Supreme Court Writ of Possession was required and bailiffs were hired to have the tenant physically removed.

The landlord submitted that the tenant did not pay any rent or overholding for the month of September 2015 and he seeks 1 month's rent for this period. The landlord also seeks one month's rent for the period of October 2015 as he could not rent the unit based on the condition of the rental unit when the tenant vacated the property.

The landlord submitted that the tenant had given his keys for his unit and the building to a number of unknown people and that none of these keys were returned to the landlord. The landlord seeks compensation for the rekeying of the building and the provision of new keys to the other occupants of the residential property.

Based on the Condition Inspection Report the landlord seeks compensation for cleaning of the rental unit; painting of the unit; and drapery cleaning. The Report records that the rental unit was very dirty; the refrigerator was full of rotting food and garbage; drapes were dirty and carpets stained; and that some walls had blood on them.

The landlord's monetary claim is as follows:

Description	Amount
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Overholding/Rent	\$970.00
Lost Revenue	\$970.00
Bailiff charges – receipt provided	\$1,560.30
Building rekeying – receipt provided	\$1,011.00
Cleaning – receipt provided	\$740.00
Painting – labour – receipt provided	\$300.00
Painting – supplies – receipts totalling \$339.77	\$510.08
Drapery cleaning	\$122.72
Total	\$6,184.10

The tenant disputes the landlord's claims in their totality however he did confirm that he did not pay rent for the month of September 2015 and that he did not return the keys to the landlord.

The tenant submitted that he had left the rental unit clean and that all of his possessions were moved out by the bailiff. He denies any blood on the walls and that any garbage was left behind.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I accept from the testimony of both parties that the tenant did not pay any rent or overholding for the month of September 2015. As such, I find the landlord is entitled an award of \$970.00 for rent for the month of September 2015.

I accept the landlord has established that the tenant failed to comply with the order of possession that was granted in the September 17, 2015 decision and that as a result of that the landlord was forced to hire a bailiff to have the tenant removed from the property. I find the landlord has established the value of that loss to be \$1,560.30 as per the invoice submitted.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

In regard to the landlord's claim for rekeying the entire building and providing all the other occupants with new keys, I accept that the tenant failed to return the keys to the rental unit and residential property. However, I am not satisfied that the landlord has provided sufficient evidence to establish that the tenant had distributed his keys to a number of his guests or that in doing so there was any risk to the remaining occupants in the residential property.

Furthermore, the landlord provided no testimony or evidence that any unlawful attempts to access the property have been made since the tenancy ended or the locks have been changed. As such, I grant the landlord an award only as compensation for having to change the locks in the rental unit and dismiss their claim for compensation for rekeying the entire building. As the landlord has not provided a specific amount for just the work on the rental unit I will grant the landlord \$75.00 as a nominal award.

In regard to the condition of the subject rental unit at the end of the tenancy the landlord has submitted a Condition Inspection Report recording it, the tenant did not attend the move out inspection. The tenant disputes that the Report is an accurate recording of the condition.

While I recognize that a landlord is required under the *Act* to complete a Condition Inspection Report, I find that when it is completed in the absence of the tenant and there is no additional evidence to corroborate the landlord's position, it is only the landlord's assertion of the condition.

When two parties provide equally plausible, but different versions of events or the condition of the rental property; the party making the claim has the burden of providing additional or corroborating evidence to substantiate their claim.

In the case before me, I find that I am presented with two versions of the condition and as such the landlord must provide sufficient evidence to corroborate their record of the condition. I note the landlords have provided no other evidence of the condition of the rental unit such as photographs that might confirm and corroborate their assertions.

As a result, I dismiss the landlord's claim for compensation for cleaning and painting. However, in regard the landlord's claim for drapery cleaning I find the tenant has provided no evidence that he had had the draperies professionally cleaned at the end of the tenancy, despite the term in the tenancy agreement requiring him to do so. As such, I find the landlord is entitled to compensation in the amount of \$122.72 as per the submitted receipt.

Finally, in regard to the landlord's claim for lost revenue for the month of October 2015, as noted I previously found the landlord had failed to provide sufficient evidence to establish the condition of the unit at the end of the tenancy required the work that they claimed was needed.

In consideration of that finding I now find that landlord has failed to establish that the condition of the rental unit was such that they could not re-rent the unit for the month of October 2015 or a portion thereof.

However, I find that the tenant's refusal to vacate the rental in accordance with the Notice to End Tenancy and Order of Possession prevented the landlord from being able to commit to a potential new tenant if the unit would be available. As such, I grant the landlord compensation for lost revenue, in the amount claimed.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,723.02** comprised of \$970.00 rent owed; \$1,560.30 bailiff costs; \$75.00 key/lock replacement; \$122.72 drapery cleaning; \$970.00 lost revenue; and \$25.00 of the \$50.00 fee paid by the landlord for this application, as they were only partially successful in their claim.

I order the landlord may deduct the security deposit and interest held in the amount of \$435.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$3,288.02**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 26, 2016

Residential Tenancy Branch