



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, CNR, OPR, OPC, MNR, MNDC, MNSD

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on July 14, 2016 for:

1. An Order cancelling three notices to end tenancy - Sections 46, 47, and 49;
and
2. A Monetary Order for compensation - Section 67.

The Landlord applied on July 21, 2016 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

This hearing was adjourned from its original hearing date of September 1, 2016. An Interim Decision, dated September 1, 2016 provided each Party with the date and time of this reconvened hearing. The Tenant did not appear to pursue its application. I therefore dismiss the Tenant's application. The Landlord was given full opportunity to be heard, to present evidence and to make submissions. As noted in the Interim Decision the unit became uninhabitable and the Tenant moved out of the unit. As a result I dismiss the Landlord's claim for an order of possession.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The Landlord is not sure when the tenancy started as he purchased the unit with the Tenant already present. The Landlord provided a copy of two pages of a tenancy agreement indicating that the tenancy started on March 1, 2006 and that no security deposit was collected. The rent was \$525.00 payable on the first day of each month. The Landlord does not know if any security deposit was collected and the Landlord did not collect one himself.

On July 4, 2016, by courier, the Landlord served the Tenant with a two month notice to end tenancy for landlord's use dated June 22, 2016 (the "Notice"). The reason for the Notice is that the Landlord is demolishing the unit. The Landlord has not paid the Tenant the compensation of the equivalent of one month's rent for this Notice as the Landlord has been waiting for this hearing. The Landlord does not know when the Tenant moved out of the unit but it was discovered empty in early July 2016.

The Landlord claims \$543.38 for the cost of plumbers attending the unit to inspect and repair a leak. The Landlord provides a bill that indicated that due to the mess in the unit the plumbers had to leave without any work done. The bill indicates that when they returned they discovered that the hot water tank had been leaking for over a month. The tank was drained and the plumbers refused to return due to health hazards.

The Landlord claims \$303.80 for the cost of the additional water that leaked out because the Tenant did not inform the Landlord of the leak. The Landlord provides a copy of the bill that sets out this amount separate from sewer and garbage charges.

The Tenant left articles and garbage in the unit and yard and the Landlord claims \$1,415.00 and \$1,575.00 for the labour and costs of removal. The Landlord estimated these costs however the clean-up will be done together with the demolition of the unit. This should occur next week.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss, the party claiming costs must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party.

There is no evidence that the leak was caused by the Tenant. The only evidence is that the leak was unreported and that the Tenant causing a second trip by the plumbers due to a mess. As the Landlord has only substantiated that the Tenant caused an additional expense for the return trip of the plumbers and as the bill does not indicate what that proportionate cost is, I find that the Landlord has only substantiated a nominal cost of **\$200.00**. Based on the undisputed evidence that the Tenant failed to report a water leak I find that the Landlord has substantiated that the Tenant causing a greater cost than usual for the water. I find that the Landlord has therefore substantiated an entitlement to **\$303.80**.

Based on the Landlord's undisputed evidence I find that the Tenant failed to remove its belongings and garbage when the Tenant vacated the unit. As the Landlord has not incurred any costs and as any costs associated with the clean-up will be covered by the demolition costs I find that the Landlord has only substantiated a nominal amount of **\$100.00** for the Tenant's failure to leave the unit clean. I dismiss the additional claimed amount.

As no security deposit was collected by the Landlord I dismiss the claim to retain the security deposit.

I note that in the amended application the Landlord indicates that an amount of rent was received from the Tenant. As no other evidence was provided in relation to a claim for unpaid rent I dismiss this claim. As the Landlord's application was found to have merit I

find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$703.80**.

Section 51 of the Act provides that a tenant who receives a notice to end a tenancy for landlord's use of property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the Landlord has not paid this amount to the Tenant as of yet, I deduct **\$525.00** from the Landlord's entitlement of **\$703.80** leaving **\$178.80** owed by the Tenant to the Landlord.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$178.80**. If necessary, this order may be filed in the Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 1, 2016

Residential Tenancy Branch