



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL OPL MNDC MNR FF

Introduction:

Both parties attended the hearing and gave sworn testimony that the tenant was personally served with the Notice to End Tenancy dated September 30, 2016 to be effective November 30, 2016. Both parties stated they received each other's Application for Dispute Resolution although the landlord contended that the tenant had filed her application too late to object to the Notice to End Tenancy. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain an Order of Possession for landlord's use of the property as they wish to renovate or repair the property in a manner that requires it to be vacant; pursuant to sections 49 and 55;
- b) A Monetary Order as compensation for damage and loss suffered due to the tenant's over-holding; and
- c) To retain the security deposit to offset the amount owing

This hearing also dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- d) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49;
- e) For compensation for harassment; and
- f) To obtain a refund of the security deposit.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenancy is ended pursuant to section 49 and they are entitled to an Order of Possession or is the tenant entitled to any relief?

Has the landlord proved on the balance of probabilities they are entitled to compensation and loss caused by the tenant's over-holding? Is the landlord entitled to recover the filing fee?

Has the tenant proved on a balance of probabilities that the security deposit should be refunded and they are entitled to compensation for harassment?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced December 1, 2013, current rent is \$605 a month and a security deposit of \$297.50 was paid November 30, 2013. The current landlords bought the unit as of September 30, 2016. The new landlords served a Notice to End Tenancy on September 30, 2016 pursuant to section 49 of the Act for the following reasons:

- a) The landlord has all the necessary permits and approvals required by law to renovate the rental unit in a manner that requires the unit to be vacant.

The tenant filed an Application to dispute the Notice on December 1, 2016 which the landlord contends is out of time pursuant to section 49 of the Act. The tenant is still in possession and has changed the locks. The landlord claims the following costs:

1. \$274.59 for costs of self storage unit to end of January 2017 to store the items bought for the renovation such as cupboards, lights and other items. Invoices are provided
2. \$453 for costs of alternate accommodation for themselves for one week as they can't access unit where they planned to stay during renovation.
3. \$1210: Unpaid over-holding rent for December (605) and January (605). Rent was unpaid for November but was free according to section 49.
4. \$3360: for repainting unit based on an estimate.
5. \$10.95 registered mail, \$17.92 for faxing, \$6.21 printing, and \$28.63 for mailing.
6. ?? Additional accommodation/meal costs and other costs to be sent by amendment. Landlord said this was not done and will be included in a future damage claim after they get possession.

The tenant said she wants her security deposit back for there was no maintenance in the three years she resided there and there were issues with carpets and plumbing. She also claims she was harassed by the landlord and should be compensated. The landlord said they were compassionate and did not harass the tenant. All emails are included in their evidence and they show they were asking for rent payments in a business like way and asking for possession according to their Notice.

Included with the evidence are copies of the Notice to End Tenancy, a lease, many emails, a move-in condition inspection report, a painting estimate and invoices. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

Order of Possession.

I find the landlords served a legal Notice to End Tenancy pursuant to section 49 on September 30, 2016. I find the tenant did not dispute the Notice until December 1, 2016 when she filed her application. Pursuant to section 49 (5), I find the tenant has 15 days to dispute the Notice and if she does not apply within the 15 days, pursuant to section 49(6), she is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice and must vacate the rental unit by that date. I find the tenant was too late in filing her application so I dismiss her application to cancel the Notice to End Tenancy. I find her tenancy ended on November 30, 2016. The landlord has agreed to an Order of Possession effective January 11, 2017 and this will be issued.

Monetary Order:

I find the tenant has been over-holding since November 30, 2016 without paying rent. I find she was entitled to one month's free rent pursuant to section 49 of the Act and this was satisfied as she paid no rent for November 2016. However, she agreed that she had paid no rent for December or January 2017 although she is still living in the unit. Rent is due and payable on the first of each month so I find the landlord entitled to two months of over-holding rent or \$1210 as claimed.

In respect to the other claims of the landlord for compensation, I find awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find by over-holding the unit, the tenant violated the Act and the tenancy agreement. I find this violation caused the landlord to incur costs of storage for renovation materials in the amount of \$274.59 and I find the landlord entitled to recover these costs from the tenant. I find the landlord also entitled to recover \$453 for one week for costs of alternate accommodation. Fortunately they were able to stay with relatives for most of the over-holding period. I find satisfactory evidence of the costs incurred for storage and accommodation. In respect to their claim for repainting, as explained to the parties in the hearing, I find insufficient evidence to support this cost at this time and will give the landlord leave to reapply for this and for further damages when ascertained. I also find insufficient evidence to support the landlord's claim #6 above for additional costs

and give them leave to reapply. In respect to their #7 above, I find section 72 of the Act provides for compensation for the filing fee but not for other processing costs of an Application so I dismiss this portion of their claim.

Regarding the tenant's claim, I find section 38 of the Act does not provide for return of the security deposit until the later of the date of the tenant vacating and providing their forwarding address in writing. The tenant has not vacated and there is unpaid rent. I find the security deposit may be used to offset the amount owing to the landlord. In respect to the tenant's claim for compensation for harassment, I have inspected the emails and records of conversations between the parties. I find insufficient evidence of harassment. I find the landlord was requesting rent when it remained unpaid or discussing possible move-out dates. I find they were merely exercising their legal rights and I find this is not defined as harassment. I dismiss the application of the tenant in its entirety.

Conclusion:

I find the landlord entitled to an Order of Possession effective January 11, 2017 as agreed by them. I find them entitled to a monetary order as calculated below. Their filing fee was waived. I give the landlord leave to reapply for further damages after the tenant vacates and within the legislated time limits.

Storage fees	274.59
Costs of accommodation	453.00
Over-holding rent, Dec. 2016 & Jan. 2016	1210.00
Less security deposit (no interest 2009-2017)	-297.50
Total Monetary Order to Landlord	1640.09

I dismiss the application of the tenant in its entirety and find she is not entitled to recover the filing fee due to her lack of success.

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: January 04, 2016

Residential Tenancy Branch

