



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order against two tenants. Neither tenant appeared at the hearing. The landlord testified that he went to the tenants' new home on July 7, 2016 with his witness. The male tenants answered the door, with his wife standing behind him, and when the tenant saw the hearing notice in the landlord's hand the tenant stated that he would not accept any paperwork from the landlord and shut the door. The landlord left the hearing packages on the door step in front of the tenants' door. The landlord submitted that he could not force the tenant to take the documents into his hand. The witness confirmed the landlord's version of events.

Under section 89(1) of the Act, an application for a Monetary Order must be served to a respondent in person or by registered mail, or as authorized by the Director. Based on what I heard, I find the male tenant was aware that the landlord was attempting to serve him with a hearing package and tried to avoid service by shutting the door before the landlord could put the hearing documents at his feet. In these circumstances, I deem the tenant sufficiently served with the hearing documents pursuant to the authority afforded me under section 71 of the Act.

Although the landlord named two tenants in this Application, I am not satisfied that the female respondent was a tenant bound by the terms of the tenancy agreement. I noted that the landlord had included a copy of a Monetary Order in his evidence that was issued under a previous dispute resolution proceeding and the Monetary Order only named the male respondent as a tenant (I have referenced the file number for the previous dispute resolution proceeding on the cover page of this decision).

The evidence that was in the file before me did not include a tenancy agreement. The landlord stated that he had submitted a copy of the tenancy agreement for the previous dispute resolution proceeding and was not aware that he had to submit it to the Residential Tenancy Branch again. I was able to access the evidence submitted under

the previous dispute resolution proceeding and upon review of the tenancy agreement I noted that only the male respondent had signed the tenancy agreement. Therefore, I consider the male respondent to be the only tenant that has an obligation to the landlord under the Act and I excluded the female respondent as a named party to this dispute.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order against the tenant in the amounts claimed?

Background and Evidence

The tenancy started August 1, 2014 on a month to month basis. The tenant paid a security deposit of \$400.00 and was required to pay rent of \$850.00 on the first day of every month. The landlord did not prepare move-in or move-out inspection reports.

The tenant failed to pay rent for June 2016. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid. The landlord then applied for and obtained an Order of Possession and Monetary Order for unpaid rent, under the Direct Request procedure, on June 14, 2016.

The landlord applied for a Writ of Possession on June 21, 2016 and on June 25, 2016 the court bailiff executed the Writ of Possession and returned possession of the rental unit to the landlord. The landlord seeks to recover the cost of the Writ of Possession and the court bailiff services from the tenant. The landlord provided a copy of the receipt for payment of the Writ of Possession in the amount of \$120.00. The landlord provided a copy of the court bailiff's invoice showing the bailiff services cost the landlord \$2,471.05.

On July 4, 2016 the landlord had a plumber attend the rental unit to unplug the drain pipes in the rental unit. The drain pipes appeared to be clogged with paper towels. The landlord seeks to recover the cost of the plumber from the tenant. The landlord provided a copy of the plumber's invoice that is in the amount of \$682.50.

On July 6, 2016 the landlord had a painter attend the rental unit to sand, fill and repaint the walls and doors in the rental unit. The landlord described the walls as being damaged by "some scratches and some holes." I heard that the rental unit was last painted the month before the tenancy started. The landlord seeks to recover the cost of the painter from the tenant. The landlord provided a copy of the painter's invoice in the amount of \$945.00.

In addition to the above, the landlord applied to recover unpaid rent for June 2016 in the amount of \$850.00. I dismissed this claim summarily as the landlord was already provided a Monetary Order for the outstanding rent for June 2016 under the previous dispute resolution proceeding. That Monetary Order may be served and enforced in addition to the Monetary Order provided with this decision.

The landlord also seeks to recover the cost of the filing fee paid for this application.

I noted that the landlord had not requested authorization to retain the security deposit. The landlord acknowledged that he is still holding the security deposit. He explained that the tenant did not seek its return. I informed the landlord that I would take into account that he has the security deposit in calculating the Monetary Order to which the landlord had no objection.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 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.

Upon consideration of all of the unopposed evidence before me, I provide the following findings and reasons.

The landlord had to obtain a Writ of Possession and enlist the services of the court bailiff in order to regain possession of the rental unit. I find the need to do so is due to the tenant's breach of the Act, including: failure to pay rent, failure to vacate the rental unit pursuant to the 10 Day Notice and the Order of Possession. Therefore, I find the landlord entitled to recover these costs from the tenant and I award the landlord \$120.00 and \$2,471.05 as requested.

Under section 32 and 37 of the Act a tenant is required to repair damage caused by their actions or neglect, or that of persons they permit on the property, and to leave a

rental unit undamaged. However, these sections of the Act also provide that reasonable wear and tear is not damage.

The landlord submitted unopposed evidence that the pipes were clogged in the rental unit and pointed to paper towels being flushed in the toilet as a likely reason. The plumber's invoice also indicated that the drains were blocked in the rental unit. I accept the evidence before me that the tenant was responsible for such conduct I hold the tenant responsible to compensate the landlord for such willful negligence. Therefore, I award the landlord \$682.50 as requested.

As for the landlord's request to recover the cost of repainting the unit, I find this claim less clear and supported. The painter's invoice does not indicate any significant damage. Nor, was I provided photographs that show damage or condition inspection reports that demonstrate damage to the rental unit walls and doors since the landlord neglected to prepare such reports. Also of consideration is that "some scratches and holes" are also consistent with wear and tear and a tenant is not responsible for wear and tear. Further, Residential Tenancy Branch Policy Guideline 40 provides that interior paint generally has a useful life of four years and the rental unit had been painted more than two years prior. Therefore, I am unsatisfied that the tenant is responsible to pay for the cost to repaint the rental unit and I deny this portion of the landlord's claim.

As the landlord's application had merit, I further award the landlord recovery of the \$100.00 filing fee paid for this application.

Since the landlord is still holding the tenant's security deposit I authorize the landlord to retain it in partial satisfaction of the amounts awarded to the landlord and I deduct the security deposit in calculating the amount of the Monetary Order.

In light of all of the above, the landlord is provided a Monetary Order calculated as follows:

Writ of Possession filing fee	\$ 120.00
Court bailiff costs	2,471.05
Cost to unclog drain pipes	682.50
Filing fee	100.00
Less: security deposit	<u>(400.00)</u>
Monetary Order for landlord	\$2,973.55

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance owing of \$2,973.55 to serve and enforce upon the tenant.

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, 2017

Residential Tenancy Branch