



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MND MNDC MNR MNSD OPR

Introduction

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

- an Order of Possession for Unpaid Rent, pursuant to section 55 of the *Act*;
- a Monetary Order for Unpaid Rent or Utilities, pursuant to section 67 of the *Act*;
- a Monetary Order for damage to the unit, site or property, pursuant to section 67 of the *Act*;
- an application to keep all or part of the security deposit, pursuant to section 72 of the *Act*; and
- a request to be reimbursed by the tenant for the filing fee, pursuant to section 72 of the *Act*.

The tenant and the landlord both participated in the conference call hearing. They were both given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that on December 20, 2016 he served the tenant in person with a Monetary Order Worksheet, an evidentiary package and a Notice of Hearing. Based on the testimony of the landlord and in accordance with sections 88, and 89 of the *Act*, I find that the tenant was served on December 20, 2016 in accordance with the *Act*.

The landlord testified that he was no longer pursuing an Order of Possession as he had taken possession of the rental unit on October 13, 2016. As the landlord has withdrawn his application for an Order of Possession, I dismiss that portion of this application. The landlord's Monetary Order was seeking \$1,822.99 in unpaid October 2016 rent and for repairs that the landlord deemed required on the property following the end of the tenancy.

Pursuant to section 64(3)(c) of the *Act*, I have amended the landlord's spelling of the municipality to that which is shown at the beginning of this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent, damage to the unit and as compensation for money owed?
- Is the landlord entitled to recover the cost of the filing fee from the tenant?

Background and Evidence

The landlord testified that this tenancy began on July 1, 2016 and was for a fixed term of 12 months. The tenancy was set to end on June 30, 2017 but an incident between the parties led to the landlord taking possession of the unit on October 13, 2016. Rent was set at \$800.00 per month and a \$150.00 security deposit was collected and continues to be held by the landlord.

The landlord is seeking a Monetary Order of \$1,822.99 for:

Item	Amount
Unpaid partial rent for October 2016	\$400.00
Unpaid Security Deposit	310.00
Rental of Carpet Cleaner	31.99
Labour for Carpet Cleaning	240.00
Building Materials for Laundry Room	211.00
Labour for Laundry Room Repairs	512.00
Change of Locks	18.00
Filing Fee	100.00
Total =	\$1,822.99

On December 14, 2016, both parties attended a dispute resolution hearing concerning the tenant's application to cancel a 10 Day Notice and for a Monetary Order. By way of the arbitrator's decision of December 14, 2016, the tenant was awarded \$400.00 as compensation for loss that resulted from the landlord taking possession of the rental unit on October 13, 2016 and denying the tenant access to his personal property. During December 14, 2016 hearing, it was agreed that on October 13, 2016 the tenant returned to the rental unit and was denied access to the unit. The landlord testified that, on October 13, 2016 they had changed the locks and were personally occupying the unit. On this day It was determined at the December 14, 2016 hearing that the landlord may not take possession of a tenanted rental unit or prevent access to the unit subject to a tenancy agreement, which remains occupied by a tenant.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove their entitlement to their claim for a monetary award.

i) ***Unpaid Rent –***

The landlord violated the *Act* when he took possession of the rental unit on October 13, 2016 and denied the tenant access to the unit by changing the locks. The landlord also acknowledged \$400.00 was collected. As the landlord took possession of the property on 13th of October, no rent was therefore due for the last two weeks of the month. The landlord's claim for rent for the remainder of the month is therefore dismissed.

ii) ***Security Deposit -***

Section 20(c)(i) of the *Act* prohibits a landlord from requiring a security or pet damage deposit other than *when the landlord and tenant enter into the tenancy*. As the tenancy has ended, there is no provision for the landlord to obtain that portion of the security deposit that was never paid by the tenant.

iii) ***Rental of Carpet Cleaning/Labour for Carpet Cleaning –***

As was established in the decision of the Residential Tenancy Branch dated December 14, 2016, the landlord occupied the unit on October 13, 2016 and prevented the tenant from gaining access to the premises. Any discussion surrounding the cleanliness of the carpet is therefore moot. The actions of the landlord prevented the tenant from ever having the opportunity to clean the carpets. The landlord's claim for monetary compensation related to the carpets is therefore dismissed.

iv) ***Building Materials for Laundry Room/Labour for Laundry Room Repairs-***

The landlord is seeking \$723.00 for materials and repairs related to water damage to the laundry room. The landlord testified that this was an on-going leak of which the tenant was aware. The landlord maintains that at one point this flooding led to water

seeping out of the laundry room into the living room, soaking the carpet. The tenant denied knowledge of any issues saying “I had no idea that a leak existed.”

The landlord provided a receipt from contractor, FF, who repaired the laundry floor. The receipt provides no breakdown of the materials that were purchased to repair the floor, nor does it detail the type of work performed. The landlord's failure to provide a detailed breakdown of what exactly was repaired and the cost associated with these materials is of critical importance, as I am unable to gauge the scope of the necessary repairs. On a balance of probabilities, I find that the landlord has not established that the tenant was aware of the leak and that the scale of repairs undertaken was necessary. As such, I dismiss the monetary claim related to the laundry room.

v) ***Change of Locks***

The actions of the landlord on October 13, 2016 to take possession of the rental unit were contrary to the *Act* and therefore any expenses related to his decision to change the locks must be absorbed by the landlord. The tenant did not request a change of locks and in fact, the landlord's decision to take this action and prevent the tenant from accessing their possessions, led the previous arbitrator to award the tenant a \$400.00 Monetary Order.

vi) ***Filing Fee***

As the landlord was unsuccessful in his application for a Monetary Order, he must cover the cost of his own filing fee.

Conclusion

The landlord's application for an Order of Possession is withdrawn.

The landlord's application for a Monetary Order is dismissed without leave to reapply.

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 20, 2017

Residential Tenancy Branch

