



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD & FF

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession based on notice given by the Tenant.
- b. A monetary order in the sum of \$6750 for loss of rent.
- c. An Order to retain the security deposit.
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The Tenant failed to provide the Branch with any written evidence.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenant by mailing, by registered mail to where the Tenant resides on January 12, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on January 1, 2017 and end on December 31, 2017. The rent is \$4500 per month payable on the first day of each month. The tenant paid a security deposit of \$2250 at the start of the tenancy.

The landlord gave the tenant the keys in late December. The Tenant testified he requested that the Terasen Gas official hook up the natural gas on December 30, 2016 but he refused to do so because of the dangerous condition of the boiler and the lack of a proper venting system. The tenant also discovered significant mould in the rental unit. He is allergic to mould.

On January 4, 2017 the Tenant returned the keys to the landlord along with a letter advising the landlord that he was not moving in.

The tenant failed to produce a copy of that letter. However, I permitted the Tenant to read the letter at the hearing. The contents of the letter included the following:

- a. A Terasen gas inspector who attended at the premises on December 30, 2017 advised that the boiler was old and was in a dangerous condition.
- b. The Terasen gas official also pointed out an external vent that had been clogged and warned there was a risk of Carbon monoxide given the condition of the boiler and the failure to have a functional venting system.
- c. There was significant mould which he was not aware of when he did the initial inspection.
- d. He advised the landlord he was not moving in and he demanded the return of his deposit.

The tenant testified he was not prepared to put his family at risk and as a result he decided to end the tenancy. He subsequently became aware there were broken windows that had been covered up by the landlord.

The landlord testified that had she been advised on the problems with the boiler she would have had it fixed. She was not able to find a Tenant for January given the late notice but she has re-rented the premises for March 1, 2017.

Analysis - Order of Possession:

It is no longer necessary to consider the landlord's application for an Order of

Analysis - Monetary Order and Cost of Filing fee:

Section 45(3) of the Residential Tenancy Act provides as follows:

Tenant's notice

45 (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. must comply with section 52 *[form and content of notice to end tenancy]*.

An arbitrator must decide the case based on the law and the evidence presented at the hearing.

Where the parties enter into a fixed term tenancy the Tenant is obliged to pay the rent for the term of the tenancy subject to the Tenant's rights under section 45(3) and the landlord's obligation to mitigate. The tenant failed to prove that he ended the tenancy under section 45(3). The tenant failed to provide the Branch with a copy of the letter. However, from the tenant's testimony it appears the letter of January 4, 2017 gave the landlord he was terminating the tenancy but it failed to give the landlord a reasonable period of time to correct the situation. The landlord testified that had they received notice from the tenant that there was a problem with the boiler they would have fixed the boiler and the venting system.

Further, the tenant's evidence that the landlord breached a material term of the tenancy agreement was not satisfactory. He testified the Terasen gas official stated this was a dangerous situation. While an arbitrator has authority to accept hearsay evidence such as this care should be given in assessing its weight. The Tenant did not call the Terasen gas official or any other expert to testify as to the condition of the heating system. He failed to produce documentary evidence of any sort from the Terasen gas official or any other person competent to provide opinion evidence as to the condition of the boiler and venting system. The tenant has failed to prove the landlord breached a material term of the tenancy agreement.

As a result I determined the landlord is entitled to the sum of \$4500 for loss of rent for January pursuant to the fixed term tenancy agreement. I granted the landlord a monetary order in the sum of \$4500 plus the sum of \$100 in respect of the filing fee for a total of \$4600.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$2250. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$2350.

Conclusion:

I ordered that the Landlord shall retain the security deposit of \$2250. In addition I further ordered that the Tenant(s) pay to the Landlord(s) the sum of \$2350.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on both parties.

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: February 08, 2017

Residential Tenancy Branch