



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MND MNDC OPC

Introduction

This hearing addressed the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for a Monetary Order for damage to the rental unit and for money owed for damage, pursuant to section 67 of the *Act*. The landlord has also applied for an Order of Possession and a return of the filing fee.

Following opening remarks, the landlord informed that she was no longer pursuing the Order of Possession as the tenants had vacated the rental unit. Additionally, witness M.G., asked whether he was to be named as a respondent. M.G. stated that he was served with a Monetary Order by way of Canada Post Registered Mail on April 11, 2017. He said that following a conversation with an information officer at the *Residential Tenancy Branch*, he was informed that his name was inadvertently left off the landlord's application for a Monetary Order as a result of an error on the part of the *Residential Tenancy Branch*.

The landlord confirmed that M.G. was not a tenant of the property, that the tenancy agreement entered into between herself and the tenants did not name M.G., that M.G. was in fact tenant G.G.'s father and that he had been served with an Application for Dispute by the landlord because he had been found responsible for the fire that ultimately led to the tenancy ending and to the landlord applying for a Monetary Order.

Section 58 of the *Act* notes that, "A person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant."

After reviewing the tenancy agreement submitted as part of the landlord's evidentiary package, and based on the oral testimony of both parties, I find that M.G. is not a tenant as defined in section 1 of the *Act* and therefore the landlord cannot seek any damages from him under the *Act*.

This decision will focus solely on the landlord's application against tenant, G.G.

Tenant G.G. confirmed receipt of the landlord's application for dispute resolution and evidentiary package by way of Canada Post registered mail on March 13, 2017.

Pursuant to sections 88 & 89 of the *Act*, the tenant is found to have been duly served with the landlord's application and evidentiary package.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for loss and damage as a result of the tenancy?

Can the landlord recover the filing fee?

Background and Evidence

Both parties provided testimony that this tenancy was entered into by tenant G.G., his girlfriend S.M., and the landlord. Only tenant G.G. is named in the landlord's application for dispute. This tenancy began on August 1, 2015 and was a fixed term tenancy set to end on July 31, 2016. Rent was \$1,575.00 per month and security and pet deposits of \$787.50 each were returned to the tenant following the conclusion of the tenancy.

It was acknowledged by all present at the hearing that on or about November 13, 2016 a fire occurred in the garage of the property. This fire led the landlord and tenants to sign a mutual agreement to end tenancy. On April 30, 2017 the tenants vacated the rental property.

The landlord has applied for a Monetary Order of \$1,697.33. She explained that this money was owed to her in respect to money she paid a restoration company, the loss of her deductible, the loss of an insurance discount and in consideration of the interest she incurred on her credit card. The landlord explained that amongst her application for a Monetary Order was an invoice demonstrating the \$500.00 fire deductible that she paid. She continued by stating, the fire was the result of an act that was prohibited by the Addendum of their tenancy agreement, namely, section 5 of the Addendum which prohibited the storage of boats on the property without the prior approval of the landlord.

The tenant disputed that the landlord should be able to recover any money related to this accident. He explained that following the conclusion of their mutual agreement to end tenancy, the parties performed a condition inspection of the rental unit. The landlord found no damage to the rental unit and returned both the pet and security deposits to the tenants. Furthermore the tenant questioned the work performed by the restoration as the receipt submitted by the landlord as part of her evidentiary package contains no

description of the work performed. In addition, he stated that there was no damage to the property.

A close examination of the evidence submitted to the hearing demonstrates that the landlord paid \$500.00 to a restoration company, though the details of the work performed are not contained. Furthermore, the landlord included a copy of her property insurance coverage summary amendment, and a copy of her credit card statement.

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 landlord to prove her entitlement to a claim for a monetary award.

The landlord has applied for a Monetary Order of \$1,697.33. She explained that this amount reflected her loss of an insurance discount, damage to the property and interest on her credit card. The tenant disputed this amount and suggested that no insurance claim was put through, that damage was done to the property and questioned whether work was actually performed to the area affected by fire. In addition, the tenant questioned why the landlord had returned his security deposit and signed off on the condition inspection report following the conclusion of the tenancy as containing no damage.

As part of her evidentiary package, she supplied receipts demonstrating her purported financial loss.

After having considered the oral testimony presented at the hearing and after a review of all of the evidence before me, I find that the landlord's application for a Monetary Order lacks sufficient detail to be awarded in its entirety. Section 67 of the *Act* requires that the claimant demonstrate loss as a result of a violation of the tenancy agreement or a contravention of the *Act*. Both parties acknowledge that a fire occurred in November 2016. The landlord explained that a large amount of damage resulted from this fire, while the tenant disputed this. The landlord has provided very little detail of the extent of

the damage that occurred as a result of the tenant's actions leading to the fire. The landlord has not produced any photographs displaying the extent of the damage, she has not provided any reports documenting the fire damage, nor has she submitted any details of the work performed by contractors that was required following this fire.

I find that the landlord is entitled to recover the \$500.00 she paid to the restoration company. The fire was the result of an act that was prohibited by the Addendum of their tenancy agreement. The tenant ignored this section of the Addendum and as a result of the violation of the tenancy agreement the tenant has created a loss for the landlord. The landlord has also applied for a return of the interest accrued on her credit card, along with the loss of a discount associated with her insurance. I do not accept this part of her application for a Monetary Order. There are numerous other ways to pay an invoice, and it was the landlord's choice to pay by credit card. The tenant should not be held responsible for the landlord's decision to pay by credit card. Placing the burden of the loss of an insurance discount would be an inequitable to the tenant, as the landlord could attempt to find a new insurer. Furthermore, the tenant is no longer in the rental unit and circumstances have changed where by the person who violated the tenancy agreement is no longer in occupation of the rental unit.

As the landlord was partially successful in her application she may recover the \$100.00 filing fee from the tenant.

Conclusion

I issue a Monetary Order in the landlord's favour in the amount of \$600.00 against the tenant. This amount includes a return of the filing fee. The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: July 27, 2017

Residential Tenancy Branch