



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, MNR, MNSD, RP, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for an order of possession and for a monetary order for unpaid rent, the cost to replace an aviary that the tenant removed, cleaning costs, garbage removal costs, mailing costs and the filing fee. The landlord also applied to retain the security and pet deposits in partial satisfaction of his claim.

The tenant applied to cancel the notice to end tenancy for non-payment of rent and for an order directing the landlord to carry out repairs. The tenant also applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

At the start of the hearing, the tenant informed me that he intended to move out on September 01, 2017. An order of possession will be granted to the landlord effective this date. Since the tenancy is ending, the tenant's application to cancel the notice to end tenancy and for an order directing the landlord to carry out repairs is moot and accordingly dismissed. The landlord's application to retain the security and pet deposits will also be dealt with after the tenancy ends.

Accordingly, this hearing only dealt with the landlord's application for a monetary order for unpaid rent, costs to replace an aviary, cleaning costs mailing costs and the recovery of the filing fee. This hearing also dealt with the remainder of the tenant's application which is to recover the filing fee.

Issues to be decided

Is the landlord entitled to a monetary order? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on May 15, 2017 for a fixed term of two years. The rent is \$2,200.00 per month due on the first of each month. The parties agreed that a \$200.00 reduction in rent was granted to the tenant for the period of May 15 to June 01, 2017, to cover the cost of cleaning the rental unit.

The landlord stated that the tenant failed to pay rent on June 01, 2017, on July 01, 2017 and paid \$365.75 on August 01, 2017. The landlord stated that at the time of this hearing the tenant owed \$6,237.25 in unpaid rent.

On July 10, 2017, the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant made application to dispute the notice in a timely manner but did not pay rent within five days of receiving the notice. On July 30, 2017, the tenant gave the landlord written notice to end the tenancy effective August 31, 2017.

The tenant stated that at the start of the tenancy, the rental unit was cluttered with construction items and he arranged for these items to be taken to the dump. Instead of paying rent, the tenant stated that he supplied the landlord with receipts for the costs he incurred to dispose of these items.

The landlord agreed that there were construction items left inside and outside the home and he agreed to allow the tenant to dispose of some. The landlord stated that he specifically informed the tenant that he had arranged for movers to pick up some items that were useable and provided a list of useable items to the tenant. Despite having provided the tenant with instructions about what items were not to be disposed of, the tenant took all the items to the dump.

The landlord agreed that his movers did not show up as scheduled and on July 06, 2017, he informed the tenant that they would come on July 10, 2017. The tenant disposed of all the items on July 07, 2017. The landlord is claiming the cost of the items he lost. The tenant used the cost of dumping the items as his reason for not paying rent.

The landlord stated that he had built an aviary at a cost of \$8,000.00 and the tenant removed it without permission and disposed of it. The tenant stated that he did have permission to do so and filed a copy of a text message which confirms that he had the landlord's permission. The landlord argued that the text message was tampered with and stated that he was unable to supply a copy of his original message because he had lost his phone while on holiday.

The landlord was very firm in his testimony that he had given the tenant permission to remove other items but not the aviary. The landlord is claiming \$8,000.00 to replace the aviary.

The landlord is also claiming \$500.00 for the cost of cleaning after the tenancy ends. I explained to the landlord that he can make application to retain all or a portion of the security deposit to cover costs of cleaning after the tenancy ends if the tenant leaves the unit in an unclean condition.

The landlord is claiming the following:

1.	Unpaid rent for June and July 2017	\$4,400.00
2.	Unpaid rent for August 2017	\$1,834.25
3.	Replace Aviary	\$8,000.00
4.	Cost of items disposed of by tenant	\$2,500.00
5.	Mailing costs	\$45.00
6.	Cleaning after tenancy ends	\$500.00
7.	Filing fee	\$100.00
	Total	\$17,379.25

Analysis

Landlord's Application

Order of possession

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

The tenant received the notice to end tenancy for unpaid rent, on July 10, 2017 and did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the notice. Pursuant to section 55(2), I am issuing a formal order of possession effective by 1:00pm on September 01, 2017. The order may be filed in the Supreme Court for enforcement.

1. Unpaid rent for June and July 2017 - \$4,400
2. Unpaid rent for August 2017 - \$1,834.25

The tenant agreed that he had not paid rent for June and July 2017 and had only paid partial rent for August 2017. Therefore I award the landlord his claim for unpaid rent. Since the tenancy was a fixed term tenancy, the landlord is at liberty to make application for any loss of income he may suffer until he finds a new tenant.

3. Replace Aviary - \$8,000.00

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenant stated that he had taken down the aviary with the permission of the landlord. The landlord denied having given the tenant permission to do so. The tenant provided proof by way of a text message from the landlord. The landlord argued that the text message was tampered with but did not have sufficient evidence to support his testimony. Even though I find the landlord's testimony credible and I find that the text message is not a copy of the actual text message itself but has been typewritten, in the absence of contradicting evidence I must go with the text message that the tenant filed into evidence.

The text message states that "*the aviary cud have remained but off limits but you chooses to take it down which I permitted*" I find that the text message filed into evidence by the tenant implies that the landlord gave the tenant permission to take down the aviary and therefore, I dismiss the landlord's claim for the cost to replace it.

4. Cost of items disposed of by tenant - \$2,500.00

The landlord agreed that his movers visited the rental unit on July 10, 2017 to pick up the items that the landlord had specifically asked the tenant to keep on the property. However the initial arrangement did not pan out and by July 07, 2017 the tenant had disposed of all the items that were left on the property. Since the tenancy started on May 15, 2017, I find that the landlord left his items on the property for a prolonged length of time. In addition the landlord did not file evidence to prove the value of these items. I dismiss the landlord's claim to recover the cost of items disposed of by the tenant.

5. Mailing costs - \$45.00

The legislation does not permit me to award any litigation related costs other than the filing fee.

6. Cleaning after the tenancy ends - \$500.00

The landlord is at liberty to make this claim after the tenancy ends. The landlord currently holds the security and pet deposits which will also be dealt with after the tenancy ends.

7. Filing fee - \$100.00

The landlord has proven a portion of his claim and therefore I award him the recovery of the filing fee of \$100.00.

Overall the landlord has established the following claim:

1.	Unpaid rent for June and July 2017	\$4,400.00
2.	Unpaid rent for August 2017	\$1,834.25
3.	Replace Aviary	\$0.00
4.	Cost of items disposed of by tenant	\$0.00
5.	Mailing costs	\$0.00
6.	Cleaning after tenancy ends	\$0.00
7.	Filing fee	\$100.00
	Total	\$6,334.25

Tenant's application:

The tenant applied to dispute the notice to end tenancy and shortly after gave the landlord notice to end the tenancy. The tenant need not have disputed the notice to end tenancy if he intended to move out.

The tenant also applied for an order directing the landlord to carry out repairs which is moot since the tenancy is ending. Since the tenant's application is dismissed, the tenant must bear the cost of filing his own application.

Conclusion

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for his established claim of \$6,334.25. This order may be filed in the Small Claims Court and enforced as an order of that Court.

I grant the landlord an order of possession effective by 1:00 pm on September 01, 2017. The Order may be filed in the Supreme Court for enforcement.

The return of the security and pet deposits will be dealt with in accordance with s. 38 of the *Act*, after the tenancy ends.

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: August 29, 2017

Residential Tenancy Branch