



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNDC, O, FF

Introduction

This hearing was convened to deal with an application by the landlord pursuant to the *Residential Tenancy Act* (the "Act"). The landlord's application, filed June 5, 2017, is for an order of possession based on a 1 Month Notice to End Tenancy for Cause, monetary orders, other unspecified relief, and authorization to recover the application filing fee.

An agent of the landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony and documentary evidence, to make submissions and to call witnesses.

As the tenant did not attend the hearing, service of the landlord's application and the notice of hearing was considered. The agent provided affirmed testimony that these materials were sent by registered mail on June 11, 2017 to the rental unit address. A copy of the Canada Post receipt was in evidence. I accept that the landlord served the tenant with these materials and, pursuant to s. 90 of the Act, the tenant is deemed to have received them five days after they were mailed.

At the outset of the hearing the landlord advised that the tenant had vacated the unit without leaving a forwarding address. Accordingly the landlord withdrew its request for an order of possession based on cause.

Issue(s) to be Decided

Is the landlord entitled to compensation for loss or damage to the rental unit?

Is the landlord entitled to compensation for breach of the Act, regulations, or tenancy agreement?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

A copy of the tenancy agreement was in evidence. It records a fixed term tenancy beginning on February 1, 2017 and ending on January 31, 2018. Monthly rent of \$1,335.00 was due on the 1st of each month. The landlord's agent advised that the tenant and landlord had a prior fixed term tenancy agreement. A security deposit of \$642.50 was paid under the prior agreement and transferred to this agreement. It remains in the landlord's possession.

The tenancy agreement has a liquidated damages clause as follows:

LIQUIDATED DAMAGES. If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of the fixed term, the tenant will pay to the landlord the sum of \$500.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.

The landlord's agent testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause effective June 30, 2017. The 1 Month Notice was in evidence. It indicates that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The agent said that the tenant's son and friends smoked in the bushes outside of the apartment and caused one or more fires. The landlord provided letters from neighbours describing the smoking by the tenant's son and his friends in that area. One of them describes a fire that started while the tenant's son and a friend were smoking in the area. The agent says that the fire department attended twice and some of the shrubbery and bark mulch was burnt. Photographs of the burnt shrubs and mulch were provided. The landlord claims \$430.50 for the cost of replacing the burnt bushes and the bark mulch and submitted a quote in support of this amount. The agent testified that the shrubs have not yet been replaced because the weather has been too hot.

The agent further testified that the tenancy ended as a result of a Mutual Agreement to End Tenancy signed by both parties and effective July 1, 2017.

A condition inspection report was completed at move-in. The agent offered the tenant two opportunities for a move-out condition inspection. Initially the agent sent the tenant a letter inviting the tenant to arrange for a time before 1:00 pm on June 30, 2017. A copy of this letter was in evidence. According to the move-out report, an inspection was then arranged for 3:00

on June 30, 2017. However the tenant and her advocate later negotiated that the inspection would occur at 3:00 pm on July 1, 2017. The agent attended at 3:00 pm on July 1 but the tenant had already left. The tenant did not leave a forwarding address and did not return all of the keys to the unit.

The agent testified that the rental unit had not been cleaned and that considerable garbage had been left behind. Photographs were provided in support. The landlord claims \$367.42 for the cost of garbage removal, \$336.00 for carpet cleaning, \$204.75 for cleaning, and \$266.28 for rekeying the unit. Receipts were provided in support of these amounts. The receipts for garbage removal and carpet care are dated July 4. The receipt for cleaning is dated July 5. The locksmith's receipt is dated July 1.

The agent said that new tenants were scheduled to move in at 4:00 pm on July 1. However because the unit was not cleaned or fully empty the landlord asked them to delay their move-in date for six days, and refund them \$280.62 in prorated rent (based on the new rental rate). The landlord seeks recovery of this amount.

The landlord also seeks liquidated damages of \$500.00 under the terms of the tenancy agreement.

Analysis

As the applicant the landlord must establish its case on a balance of probabilities. I am satisfied on a balance of probabilities that the damage to the shrubbery and bark mulch was caused by the cigarettes that the tenant's son was smoking or was allowing his friends to smoke in the area. Accordingly I award the landlord the amount claimed for remediation and replacement of the burnt shrubbery and mulch (\$430.50).

I accept the affirmed and undisputed evidence of the landlord's agent that the rental unit required the cleaning and garbage removal in the amounts claimed: \$367.42 for the cost of garbage removal, \$336.00 for carpet cleaning and \$204.75 for cleaning.

I accept only a portion of the landlord's claim of \$266.28 for rekeying. The landlord was charged an additional \$210.00 for calling out the locksmith on a statutory holiday. However, cleaning, carpet cleaning and garbage removal invoices indicate that that work was done on July 4 and 5. The landlord's agent advised that the new tenants agreed to postpone their move-in date until July 6, and did not explain why the locksmith was called out on a statutory holiday when the other services were not. Accordingly, I award \$46.90, inclusive of tax, for the rekeying.

The landlord is not entitled to liquidated damages. The liquidated damages clause in the tenancy agreement does not apply in these circumstances, as the tenancy has ended as a result of the Mutual Agreement to End Tenancy, not because the tenant has breached a material term causing the landlord to end the tenancy. Had the landlord wished to

claim liquidated damages against the tenant it could have negotiated that as part of the agreement to end the tenancy.

As the clause does not apply, I do not need to decide whether it is valid under the test set out in Policy Guideline #4.

I accept that the landlord has also lost rental income of \$280.62 by delaying the move-in date for its new tenants. I award the landlord this amount.

Conclusion

The landlord's application for liquidated damages is not allowed.

The landlord's application for compensation for damage to the rental unit (cleaning, carpet cleaning, garbage removal) and for damage to the outside shrubbery and mulch is allowed, as is its claim for lost rental income. A portion of the cost of rekeying is also allowed.

As the landlord is successful in its application, the landlord is also entitled to recover the application filing fee of \$100.00.

The landlord continues to hold the tenant's security deposit of \$642.50. Over the period of this tenancy no interest is payable on that deposit. I authorize the landlord pursuant to s. 72(2)(b) to retain the tenant's security deposit in partial satisfaction of the monetary award.

I award the landlord **\$1,123.69**, calculated as follows:

Replacing burnt shrubbery and mulch	\$430.50
Garbage removal	\$367.42
Cleaning	\$204.75
Carpet cleaning	\$336.00
Cleaning	
Rekeying	\$46.90
Lost rental income	\$280.62
Application filing fee	\$100.00
Less security deposit	-\$642.50
Total	\$1,123.69

The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it 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 s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 02, 2017

Residential Tenancy Branch