



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: CNR MNSD LRE FF
For the landlord: OPR OPB MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 4, 2017 (the “10 Day Notice”), for an order to suspend or set conditions on the landlord’s right to enter the rental unit, for the return of the tenants’ security deposit and pet damage deposit, and to recover the cost of the filing fee. The landlord applied for an order of possession for unpaid rent or utilities, based on the tenants breaching a fixed term tenancy, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to retain all or a part of the tenants’ security deposit and pet damage deposit, and to recover the cost of the filing fee.

The landlord attended the hearing. The tenants did not attend the hearing. As the tenants did not attend the hearing to present the merits of their application, the tenants’ application was **dismissed, without leave to reapply**, after the 10 minute waiting period had elapsed. The hearing continued with consideration of the landlord’s application.

The hearing process was explained to the landlord, and the landlord was given an opportunity was given to ask questions about the hearing process. Thereafter the landlord gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The landlord provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the tenants by registered mail on July 17, 2017 by way of a separate registered mail package for each of the two tenants and addressed to each tenant separately. The landlord provided two registered mail tracking numbers in evidence. The landlord confirmed that the names and addresses on both of the registered mail packages matched the names of the tenants and their address and that both signed for and accepted their respective packages on the same date, July 19, 2017 which is supported by the online registered mail tracking website. As a result, I find that both tenants were served as of July 19, 2017 which is the date both registered mail packages were signed for by each tenant.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord confirmed that the tenants vacated the rental unit as of July 21, 2017 and as a result, I determined that an order of possession was no longer necessary as the landlord has already re-rented the rental unit to new tenants, albeit for less rent than the tenants in this matter were paying.

The landlord also testified that the tenants surrendered their full security deposit of \$3,500.00 and pet damage deposit of \$1,500.00 towards unpaid July 2017 rent which was supported by the condition inspection report document submitted in evidence. As a result, the landlord also stated that the original monetary claim was reduced from the original amount of \$15,320.00 to the reduced amount of \$9,287.14 which I find does not prejudice the tenants as the amount is lower than the original claim. As a result, I find that it is not necessary to consider the security deposit or pet damage deposit as the tenants have already surrendered both to the landlord in full.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on October 24, 2016. Monthly rent in the amount of \$4,950.00 was due on the first day of each month. The tenants paid a security deposit of \$3,500.00 and a pet damage deposit of \$1,500.00 during the tenancy, which the landlord continues to hold.

The landlord's reduced monetary claim is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. August 2017 rent	\$4,950.00
2. Tenant replacement fee	\$2,300.00
3. Unpaid water utility bill for April, May & June 2017	\$459.39
4. July unpaid water bill (1/3 of amount listed in #3)	\$153.00
5. Garburator repair	\$99.75
6. Rent differential between tenants amount of rent for September and October and what the new tenants are now paying per month (calculated at \$350.00 in rent differential for two months)	\$700.00
7. Filing fee	\$100.00
8. Garden clean up (claiming only ½ of total amount of bill of \$1,050.00)	\$525.00
TOTAL	\$9,287.14

Regarding item 1, the landlord testified that the tenants vacated before the end of the fixed term tenancy which was not scheduled to end until October 31, 2017. The landlord stated that while the tenants vacated the rental unit on July 21, 2017 the landlord was unable to secure new tenants until September 1, 2017 and even then had to reduce the amount of monthly rent to \$4,600.00 to ensure new tenants were in the rental unit as soon as possible due to the tenants breaching the fixed term tenancy. As a result, this portion of the landlord's claim was for loss of August 2017 rent due to the tenants vacating the rental unit before the end of their fixed term tenancy in the amount of \$4,950.00.

Regarding item 2, this portion of the landlord's claim was dismissed during the hearing as the landlord failed to include a liquidated damages term in the tenancy agreement

and therefore the amount claimed of \$2,300.00 was not agreed in writing between the parties at the start of the tenancy.

Regarding item 3, the landlord has claimed \$459.39 however the actual utility bill submitted was one cent less in the amount of \$459.38 so I will consider the lower amount which is supported by the utility bill submitted in evidence for unpaid water utility. The tenancy agreement submitted in evidence supports that utilities were not included in the monthly rent.

Regarding item 4, the landlord has claimed \$153.00 for unpaid July water utilities as arrived at that amount by using 1/3 of the amount referred to in item 3 above as the utility bill was not yet received by the landlord prior to hearing.

Regarding item 5, the landlord has claimed \$99.75 for the cost to repair a garburator that the landlord stated was working at the start of the tenancy and was not working at the end of the tenancy. The landlord submitted a receipt which supports the full amount of this portion of the landlord's claim. The landlord also referred to the condition inspection report in support of this portion of their claim.

Regarding item 6, the landlord has claimed \$700.00 comprised of rent differential of \$350.00 for the months of September and October 2017. The landlord testified that the new tenants that the landlord was able to secure once the tenants breached the fixed term tenancy agreed to pay a monthly rent of \$4,600.00 which left a rent differential of \$350.00 from the \$4,950.00 amount listed on the tenants' fixed term tenancy agreement which did not expire until October 31, 2017. The landlord also provided a copy of the new tenancy agreement to support that \$4,600.00 was the amount of monthly rent for the new tenants and that their tenancy began on September 1, 2017.

Regarding item 7, the landlord has claimed \$100.00 to recover the full cost of the filing fee which will be addressed later in this decision.

Regarding item 8, the landlord is claiming for \$525.00 which is half of the amount of the invoice submitted in evidence in the amount of \$1,050.00 for garden cleanup costs. The landlord referred to Appendix 10 of the tenancy agreement addendum which supports that the tenants agreed to the following condition by signing off on the following term:

“10 – The tenant is responsible for routine yard maintenance, which includes cutting grass, watering the garden and clearing snow. The tenant is responsible

for reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.”

[Reproduced as written]

The landlord affirmed that while the total amount to the landlord was \$1,050.00 the landlord is trying to be fair with the tenants by only charging them 50% of the total cost to clean up the gardening costs based on the condition of the yard/garden left by the tenants at the end of the tenancy.

Analysis

Based on the undisputed testimony of the landlord and the unopposed documentary evidence before me, and on the balance of probabilities, I find the following.

Monetary claim – As the tenants were served and did not attend the hearing to dispute the landlord’s claim or to present the merits of the tenants’ claim, I find the landlord’s claim to be unopposed and undisputed by the tenants. Therefore, other than item 2 which was dismissed during the hearing as the tenancy agreement did not support the \$2,300.00 tenant replacement fee as claimed by the landlord, I find the landlord’s monetary claim is successful. I find the tenants breached sections 26 and 45(2) of the *Act* by failing to pay \$4,950.00 for August 2017 rent and that the earliest the tenants could have ended the tenancy was October 31, 2017 which is the end of the fixed term tenancy. I find the landlord complied with section 7 of the *Act* by securing new tenants and that the tenants are responsible for the rent differential for the months of September and October as claimed by the landlord. I also find the tenants breached section 37 of the *Act* and that they damaged the garburator as claimed by the landlord.

As the landlord’s claim had merit, I grant the landlord the recovery of the cost of the **\$100.00** filing fee.

I find that the landlord has established a total monetary claim of **\$6,987.13** as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. August 2017 rent	\$4,950.00
2. Tenant replacement fee	dismissed
3. Unpaid water utility bill for April, May & June 2017	\$459.38 (noting 1 cent difference on receipt)
4. July unpaid water bill (1/3 of amount listed in #3)	\$153.00
5. Garburator repair	\$99.75
6. Rent differential between tenants amount of rent for	\$700.00

September and October and what the new tenants are now paying per month (calculated at \$350.00 in rent differential for two months)	
7. Filing fee	\$100.00
8. Garden clean up (claiming only ½ of total amount of bill of \$1,050.00)	\$525.00
TOTAL	\$6,987.13

I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenants to the landlord in the amount of **\$6,987.13**.

I caution the tenants to comply with sections 26, 37 and 45(2) of the *Act* in the future.

I caution landlord to comply with section 19(1) of the *Act* in the future as the maximum amount of a security deposit and pet damage deposit is ½ of the monthly rent for each deposit.

Conclusion

The tenants' application is dismissed in full, without leave to reapply.

The landlord's application is mostly successful.

The landlord has established a total monetary claim of \$6,987.13. I find the tenants have already surrendered their full security deposit and pet damage deposit to the landlord. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$6,987.13. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: September 28, 2017

Residential Tenancy Branch