



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, FF, O, OLC, DRI, MNDC

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- authorization to retain the tenant’s security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for unpaid rent and compensation for money owed or damages under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to dispute a rent increase pursuant to Section 43;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlords attended the hearing by way of conference call, the tenant did not. I waited until 11:15 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 a.m. The landlords were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlords gave sworn testimony that on August 6, 2017 copies of the Application for Dispute Resolution hearing package ('Application') and evidence were personally served to the tenant. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with copies of the landlords' application and evidence.

The landlords provided undisputed testimony that the tenant was served with the 10 Day Notice, with a corrected effective date of July 15, 2017, on July 5, 2017 by way of personally serving the tenant in the presence of a witness. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on July 5, 2017.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession based on the 10 Day Notice?

Are the landlords entitled to a monetary award for unpaid rent, damages or money owed under the tenancy agreement, regulation, or *Act*?

Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

The landlords gave undisputed testimony regarding the following facts. This month to month tenancy began on July 1, 2007, with monthly rent set at \$1200.00, payable on the first of each month. The landlords collected, and still hold, a security deposit of \$450.00. The landlord testified that they discovered that the tenant had abandoned the unit on September 18, 2017. The landlord testified that the tenants have always had problems keeping up in paying the rent. The landlord testified that it became especially bad this year. The landlord testified that despite trying to assist the tenant, the tenant was unable to catch up on their unpaid rent. The landlord testified that the tenants made partial payments to which they were given a receipt for "use and occupancy only" and that the tenancy was not reinstated. The landlord testified that as of today's hearing the amount of unpaid rent is \$5600.00 for 2017.

The landlord testified that they had arranged to have some work conducted in the main floor of the home. The landlord testified that the tenant convinced the contractor to conduct bathroom and kitchen upgrades in the basement level of the home without the landlord's permission. The landlord testified that the tenant promised to pay the landlord for this upgrades but never did. The landlord testified that the tenant damaged those upgrades along with the rest of the unit that they no longer can benefit or use them. The landlord seeks \$3688.00 for the unauthorized repairs.

Item	Amount
Unpaid Rent	\$5600.00

Unauthorized repairs	3688.00
Recovery of Filing Fee	100.00
Less Security Deposit	-450.00
Total Monetary Order Requested	\$8938.00

Analysis

The landlord advised that the tenants have abandoned the unit and that he has taken possession of it, accordingly I dismiss the landlords request for an order of possession as it is no longer required.

In the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without liberty to reapply.

The landlords provided undisputed evidence that the tenant failed to pay the rent from January 2017- September 2017, therefore, I find that the landlords are entitled to \$5600.00 in arrears for the above period. The landlords have also provided undisputed evidence of the unauthorized repairs. The landlords have submitted extensive documentation to support that claim. I find that the landlords are entitled to \$3688.00 for the unauthorized repairs.

The landlords continue to hold the tenant's security deposit in the amount of \$450.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim.

I find that the landlords are entitled to the recovery of the \$100.00 filing fee from the tenant.

The landlord testified that the tenant left the unit with extensive damage. The landlord testified that the estimated amount to repair the unit is thirty thousand dollars. The landlord did not provide notice of this claim to the tenant for this hearing and I therefore find that it is premature for me to address it at this time. The landlords claim for damages to the abandoned unit is dismissed with leave to reapply.

Conclusion

As the tenant did not attend this hearing, their entire application is dismissed without leave to reapply.

I issue an \$8938.00 Monetary Order in favour of the landlords under the following terms, which allows the landlords to recover unpaid rent, damages and the filing fee, and also allows the landlords to retain the tenant's security deposit:

Item	Amount
Unpaid Rent	\$5600.00
Unauthorized repairs	3688.00
Recovery of Filing Fee	100.00
Less Security Deposit	-450.00
Total Monetary Order Requested	\$8938.00

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: October 02, 2017

Residential Tenancy Branch