



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNRF, MNSD, OPR

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$9878 for unpaid rent and damages
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenant by mailing, by registered mail to where the Tenant resides on September 2, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order of Possession?
- b. Whether the landlord is entitled to a Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written fixed term tenancy agreement that provided that the tenancy would start on October 1, 2016 and end on September 30, 2018. The rent was \$3500 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1750 and a pet damage deposit of \$1750 for a total of \$3500 at the start of the tenancy.

In early 2017 the tenant determined the rental unit was not satisfactory and that he wished to terminate the lease. He attempted to engage with settlement discussions on many occasions by e-mail but the landlord failed to respond. At one stage the tenant e-mailed he intention to leave at the end of August. He subsequently e-mailed his intention to leave at the end of July.

The landlord started advertising the rental unit on July 10, 2017 by placing an advertisement on Craigslist. The landlord also hired a leasing agent to help find a prospective tenant.

The tenant vacated the rental unit on July 31, 2017. I determined that the parties participated in an inspection on that date. The tenant provided the landlord with his forwarding address in writing on August 4, 2017.

Landlord's Application - Order of Possession:

It is no longer necessary to consider the landlord's application for an Order of Possession as the Tenant has vacated the rental unit and the landlord has regained possession.

Landlord's Application for a Monetary Order

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

.With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord is entitled to \$1034.82 for the cost of metered water which the landlord paid to the District. The tenant acknowledged responsibility for this claim.
- b. The landlord claimed the sum of \$7000 for loss of rent for the months of August and September 2017. The landlord testified they were not able to re-rent the rental unit for those months. Eventually the new tenant took possession of the rental unit on October 1, 2017 for the same price.

Section 45(2) of the Act provides as follows:

45 ((2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Subject to the landlord's obligation to mitigate by acting reasonably to find a new tenant, the tenant is obliged to pay the rent for the unexpired portion of the fixed term.

Policy Guideline #5 provides as follows:

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. Oral notice is not effective to end the tenancy agreement, and the landlord may require

written notice before making efforts to re-rent. Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable.

I determined the landlord acted reasonably in attempting to re-rent the premises but was not successful and lost rent for August and September 2017. The Craigslist advertisement was placed on Craigslist on July 4, 2017. The landlord hired a leasing agent to help in the rental of the unit.

- c. I determined the landlord is entitled to \$875 for the cost of the leasing agent. The landlord incurred this expense and it was foreseeable given there was more the one year left on the lease.
- d. I determined the landlord is entitled to \$78.75 for the cost of a flea inspection. The tenant accepted responsibility for this charge.
- e. I dismissed the claim of \$200 for the cost of carpet repairs as the landlord failed to prove the tenant caused the damage and that it wasn't pre-existing before the start of the tenancy.
- f. I dismissed the landlord's claim of \$39.65 for the cost of hydro. The tenant was not in the rental unit during the period covered by this bill and is not responsible to pay it.
- g. I dismissed the claim of \$650 for the cost of landscaping. The landlord failed to produce an account from the landscaping company. The tenant produced a receipt from a landscaping company that he used which indicates he paid a landscaping company \$735 for work done on July 28, 2017.

Monetary Order and Cost of Filing fee

In summary I determined the landlord has established a claim against the tenant in the sum of \$8988.57 plus \$100 for the cost of the filing fee for a total of \$9088.57.

Security Deposit/Pet Damage Deposit

Policy Guideline 17 includes the following:

- "1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
- a landlord's application to retain all or part of the security deposit; or

- a tenant's application for the return of the deposit.
unless the tenant's right to the return of the deposit has been extinguished under the Act¹⁴. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return."

The Residential Tenancy Act provides that a landlord must return the security deposit/pet damage deposit to the tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit/pet damage deposit.

I determined the security deposit and the pet damage deposit totals the sum of \$3500 which was paid in September 2016. I determined the tenancy ended on July 31, 2017. I further determined the tenants provided the landlord with his forwarding address in writing on August 4, 2017. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. The Application for Dispute Resolution is dated August 23, 2017 and the hearing letter is dated August 31, 2017. The tenant has not waived the doubling of the security deposit and pet damage deposit. I determined the tenant has established a claim against the landlord for double the security deposit/pet damage deposit.

The landlord has established a claim against the tenant in the sum of \$9088.57.

I determined that the landlord is entitled to retain the security deposit/pet damage deposit in the sum of \$3500 thus reducing the claim to \$5588.57. The tenant is also entitled to set off the doubling portion of the security deposit and pet damage deposit in the sum of \$3500 thus reducing the claim to \$2088.57.

Monetary Order:

I ordered the landlord shall retain the security deposit/pet damage deposit in the sum of \$3500. In addition I ordered that the Tenant pay to the Landlord the sum of \$2088.57.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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: November 22, 2017

Residential Tenancy Branch