



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants' applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend. The landlord stated that the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on September 24, 2017 and has provided a copy of the Canada Post Customer Receipt tracking number as confirmation. The landlord provided undisputed evidence that the tenant was also served with the amendment to the application for dispute on October 20, 2017 via Canada Post Registered Mail. The landlord also stated that the tenants' notice of hearing package and submitted documentary evidence was received and is aware of the issues of the tenants' application for dispute.

I accept the undisputed affirmed evidence of the landlord and find that the tenants have been properly served as per sections 88 and 89 of the Act via Canada Post Registered Mail.

At 28 minutes past the start of the hearing time, the tenants' application was dismissed without leave to reapply. The landlord indicated during the hearing that the tenants had vacated the

rental unit on October 2, 2017 and that an order of possession was no longer required. As such, no further action is required for the order of possession. The hearing proceeded on the landlord's monetary claim.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on September 20, 2016 on a fixed term tenancy ending on July 31, 2018 as shown on the submitted copy of the signed tenancy agreement dated September 19, 2016. The monthly rent is \$4,950.00 payable on the 1st day of each month. A security deposit of \$2,475.00 and a pet damage deposit of \$1,000.00 were paid on September 20, 2016. A condition inspection report for the move-in was completed by both parties on September 20, 2016.

The landlord's amendment seeks an order of possession and a monetary order for unpaid rent and money owed of \$16, 307.50 which consists of:

\$14,850.00	Unpaid Rent, 3 months X \$4,950.00 (August, September, October)
\$100.00	Filing Fee
\$955.50	Damage, Patching/Painting, decking
\$409.50	Cleaning

The landlord provided undisputed affirmed testimony that the tenants were served with the 10 Day Notice dated September 7, 2017 via Canada Post Registered Mail on September 7, 2017 and have provided a copy of the Canada Post Customer Receipt and Tracking label as confirmation. The landlord clarified that the package was returned by Canada Post as "unclaimed". The 10 Day Notice sets out that the tenants failed to pay rent of \$9,900.00 that was due on September 1, 2017 and an effective end of tenancy date of September 18, 2017. The landlord stated that since the 10 Day Notice was served, no rent has been paid.

The landlord also provided undisputed evidence that upon vacating the rental unit on October 2, 2017, the landlord discovered that the tenants had left the unit dirty requiring cleaning and damaged which required the patching/painting of walls throughout the rental property. The landlord also stated that damage was caused to the decking which required replacement.

In support of this claim, the landlord has provided:

- A copy of the 10 Day Notice dated September 7, 2017
- A copy of Canada Post Registered Mail receipt dated September 7, 2017
- A copy of signed tenancy agreement dated September 19, 2016
- A copy of a completed condition inspection report for the move-in
- A copy of an incomplete condition inspection report for the move-out
- Copies of 3 "NSF" cheques returned by the bank
- Copies of 61 photographs showing the condition of the rental property
- Copy of invoice dated October 18, 2017, re: damage repairs
- Copy of invoice dated October 4, 2017, re: cleaning

Analysis

I accept the undisputed evidence of the landlord and find that a 10 Day Notice dated September 7, 2017 was served to the tenants via Canada Post Registered Mail on September 7, 2017. Although the tenants did not claim the package, I find pursuant to section 90 of the Act that the tenants are deemed sufficiently served.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of the landlord and find that a claim has been established. The landlord has provided evidence that the tenants failed to pay rent as a result of the 10 Day Notice dated September 7, 2017. I also accept the undisputed evidence of the landlord that the rental property was left dirty requiring cleaning and damaged which required repairs as outlined in the landlord's submitted invoice(s). This was supported by the landlord's submission of the condition inspection report and photographs depicting the condition of the premises. As such, the landlord has established a total monetary claim of \$16, 215.00.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

In offsetting this claim, I authorize the landlord to retain the \$2,475.00 security deposit and the \$1,000.00 pet damage deposit in partial satisfaction of this claim.

Conclusion

I issue a monetary order in the landlord's favour under the following terms which allows the landlord to recover the original security deposit and pet damage deposit in satisfaction of the claim:

Item	Amount
Landlord's Monetary Award	\$16,215.00
Recovery of Filing Fee	\$100.00
Offset Security/Pet Deposits	-\$3,475.00
Total Monetary Order	\$12,840.00

The landlord is provided with this order in the above terms and the tenant(s) must be served with a copy of 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 orders 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: November 09, 2017

Residential Tenancy Branch