



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, MNR, MNSD, OLC, ERP, RP, PSF, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent, loss of income, cleaning and repair and the filing fee. The landlord also applied to retain the security deposit.

The tenant applied for an order to cancel the notice to end tenancy, for the recovery of the filing fee and for the return of the security deposit. The tenant also applied for an order directing the landlord to comply with the *Act*, carry out emergency repairs and provide services.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

The landlord amended her application to include loss of income and the cost of cleaning and repair and mailed the package to the tenant on November 17, 2017, by registered mail to the address provided by the tenant. The landlord filed a copy of the tracking slip. The tenant did not pick up the package. The landlord submitted evidence showing that the registered mail containing the notice to end tenancy was unclaimed by the tenant and returned to the landlord. As the tenant cannot evade service by neglecting to pick up registered mail, I find the tenant was duly served with the landlord's amendment and evidence package.

During the hearing, the parties informed me that the tenant had moved out on October 31, 2017. Therefore, except for the return of the security deposit and the recovery of the filing fee, all portions of the tenant's application are moot and accordingly dismissed. Since the tenant has moved out, the landlord is no longer in need of an order of possession.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent, loss of income, the cost of cleaning and repair and the filing fee? Is the tenant entitled to the return of the security deposit and the filing fee?

Background and Evidence

The tenancy started on May 25, 2016 and ended on October 31, 2017. The rent at the end of the tenancy was \$839.60 per month due on the first day of each month. The tenant paid a security deposit of \$400.00.

The tenant testified that on October 01, 2017, she attempted to pay rent and the landlord refused to take it. The landlord denied having refused rent. On October 02, 2017, the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent in the amount of \$829.60. The tenant moved out on October 31, 2017 without paying rent for October 2017.

The landlord testified that she advertised for a new tenant in the local newspaper on November 02, 2017 and found a new tenant starting December 01, 2017. The landlord is claiming loss of income for the month of November.

The landlord stated that the tenant left the unit in an unclean condition and filed photographs of the stained carpet, bugs in the window tracks and a large reel left behind. The landlord also filed a copy of a paid invoice which shows that she paid \$140.00 for cleaning the carpet and \$35.00 for removal of the heavy reel. The landlord also requested \$20.00 for her time spent cleaning the window tracks.

The tenant denied having left the unit in an unclean condition. The tenant repeatedly asked me to address her evidence that related to witness letters about the landlord forging documents, adding terms to the tenancy agreement without the tenant's permission, harassing the tenant during the tenancy and not clearing the snow on the steps and walkways. The tenant also filed photos off the snow build up.

I explained to the tenant that allegations of forgery would be dealt with by the police and that while the landlord was responsible for snow removal; I am unable to order her to do so because the tenancy has ended. In addition this hearing only dealt with the tenant's application for the return of the security deposit and for the recovery of the filing fee. The tenant stated that she would seek legal advice regarding her allegations against the landlord for harassment and loss of quiet enjoyment.

Analysis

The landlord's monetary claim is assessed as follows:

Unpaid rent for October 2017 - \$829.60

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. The tenant agreed that she did not pay rent for October 2017 and therefore I find that the landlord is entitled to rent in the amount of \$829.60.

Loss of income for November 2017

The tenant did not pay rent on October 01, 2017 and was served a ten day notice to end tenancy.

Residential Tenancy Policy Guideline #3 refers to claims for loss of income. This guideline states that in a month to month tenancy, if the tenancy is ended by the landlord for nonpayment of rent, the landlord may recover any loss of rent suffered for the next month, as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.

Section 5 of the *Residential Tenancy Policy Guideline* states that where a landlord gives a notice to end tenancy and is entitled to claim damages for loss of rental income, the landlord's obligation to re-rent the rental unit begins after the relevant dispute period set out in the *Residential Tenancy Act* has expired.

If the tenant files an application to dispute the notice, the landlord is not required to find a new tenant until the arbitration decision and order are received and the time limits for a review application has passed.

In this case, I find that on October 04, 2017, the tenant filed an application to dispute the notice to end tenancy and then moved out on October 31, 2017. Based on the above, the landlord was not required to find a new tenant until the arbitration decision is received. I find that the landlord made efforts to find a new tenant immediately after the tenant moved out. The landlord found a tenant for December 01, 2017 and therefore suffered a loss of income. I find that the tenant is liable for this loss and accordingly I award the landlord her claim of \$829.60 for loss of income.

Carpet cleaning, window cleaning and removal of reel - \$195.00

The landlord has provided photographs and invoices to support her claim. Accordingly I award the landlord \$195.00.

Filing fee - \$100.00

The landlord has proven her claim and therefore is entitled to the filing fee of \$100.00.

The tenant received the notice to end tenancy for unpaid rent and disputed the notice. A hearing was set for this date, but prior to this hearing the tenant moved out of the unit. Since the tenant need not have made this application if she intended to move out, I find that the tenant must bear the cost of filing her own application.

Overall the landlord has established a claim for unpaid rent (\$829.60) loss of income (\$829.60), cleaning (\$195.00) and the filing fee (\$100.00) for a total of \$1,954.20. I order that the landlord retain the security deposit of \$400.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1,554.20. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$1,554.20**.

The remainder of the tenant's application is dismissed.

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: December 19, 2017

Residential Tenancy Branch