



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPB, MNDC, OLC, PSF, RR, 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 the recovery of the filing fee. The tenant applied for compensation for the cost of cleaning and painting, for the loss of the use of the laundry, for the cost of shampooing the carpet and for the recovery of the filing fee.

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.

Issues to be decided

Did the parties enter into a fixed term tenancy that required the tenant to move out at the end of the fixed term? Is the tenant entitled to compensation for the cost of cleaning and painting, for the loss of the use of the laundry, for the cost of shampooing the carpet and for the recovery of the filing fee?

Background and Evidence

The tenancy started on October 10, 2016 for a fixed term of one year. A copy of the tenancy agreement was filed into evidence. In that agreement the tenant initialled the term that states that on September 30, 2017, the tenancy ends and the tenant must move out of the rental unit.

The landlord's agent (DB) stated that the landlord offered the tenant another fixed term lease and visited the rental unit to discuss. Both parties agreed that the landlord carried the new lease paperwork to the meeting but did not show it to the tenant. The tenant was not sure of what the terms of the new lease would be and was also not informed of what the rent would be under the new lease.

The tenant stated that since she did not have any information, she refused to enter into another lease but agreed to take on a month to month tenancy.

The tenant stated that at the start of the tenancy, the landlord did a walk through but did not fill out a condition inspection report. The home has five bedrooms but one of them was smoke damaged and unsuitable for use. The tenant stated that the landlord informed her that the damage was from the use of incense.

The tenant testified that the room was unavailable for use and the landlord refused to have the room cleaned and painted. The tenant testified that the landlord told her to go ahead and clean the walls and use the paint that was stored in the garage. The agent for the landlord denied that the landlord had this conversation with the tenant. The tenant did it herself along with her family members. The tenant stated that the cleaning involved the use of a chemical to neutralize the odour of smoke.

The tenant is claiming \$160.00 for labour to clean and \$240.00 for the cost of labour to paint the room. The tenant also stated that the carpet had to be shampooed and she is claiming \$140.00 for the cost of the rental and labour. Other supplies cost \$141.88 and the landlord agreed to the cost of supplies. Overall the tenant is claiming \$698.97 for the cost of restoring the room to a useable condition. The tenant filed a copy of an estimate to do the same job and it quoted approximately double what the tenant is claiming.

Both parties agreed that the laundry machine was out of order for approximately 25 days. The tenant is claiming \$207.00 for the cost of doing the laundry of six persons at a laundromat, for this period.

The tenant described a bathtub leak that occurred during the tenancy. The landlord responded to the tenant's request for repairs but the problem reoccurred about a month later. The landlord hired a plumber to carry out the repairs. The plumber did not show at the appointed time, the tenant did the repairs herself and is claiming \$100.00 for her time and materials.

In October 2017, the powerhead of the in- built vacuum broke and the tenant replaced it. A copy of the invoice was provided to the landlord. The tenant is claiming to be reimbursed in the amount of \$69.95.

The tenant withdrew her claim for the cost of painting the other bedroom in the amount of \$222.29.

The tenant is claiming the following:

1.	Cleaning and painting smoke damaged bedroom	\$698.97
2.	Repair leaking bathtub	\$100.00
3.	Cost of doing laundry	\$207.00
4.	Vacuum Powerhead	\$69.95
5.	Filing fee	\$100.00
	Total	\$1,175.92

Analysis

Landlord's application

Section 44 (1) (b) of the *Residential Tenancy Act* states that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. Based on the signed tenancy agreement and the testimony of both parties, I find that the tenancy was a fixed term tenancy which ended on September 30, 2017. I further find that the tenant was required to move out by that date.

Based on the tenancy agreement and section 44, I find that the landlord is entitled to an order of possession. Pursuant to section 55(2); I am issuing a formal order of possession effective at 1:00 p.m. on January 11, 2018. The Order may be filed in the Supreme Court for enforcement.

The landlord has proven his case and therefore is entitled to the recovery of the filing fee.

Tenant's application

Based on the testimony of both parties and the documents filed into evidence, I find on a balance of probabilities that it is more likely than not that one of the bedrooms was smoke damaged and required to be cleaned and painted. I find that the tenant's claim of \$698.97 is reasonable and accordingly I award her this amount.

The landlord agreed that the bathtub was leaking and that the plumber did not show up to fix the leak. I find that the tenant is entitled to her claim of \$100.00.

Both parties agreed that the washer was unavailable for use for a period of 25 days. I grant the tenant her claim of \$207.00 for the cost of doing laundry.

The tenant provided proof of having replaced the power head on the built-in vacuum system. Accordingly I award the tenant the cost of doing so.

The tenant has proven her claim and is therefore entitled to the recovery of the filing fee.

Overall the tenant has established a claim of \$1,175.92 and the landlord has established a claim of \$100.00. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for the amount of \$1,075.92. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Since the tenancy is not over, the parties can deal with the return of the security deposit in accordance with s.38 of the *Residential Tenancy Act*, after the tenant moves out of the rental unit.

Conclusion

I grant the landlord an order of possession effective at **1:00 p.m. on January 11, 2018.**

I grant the tenant a monetary order in the amount of **\$1,075.92.**

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 28, 2017

Residential Tenancy Branch