



Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDL MNRL OPR CNR FFT OLC PSF

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt applications from both parties:

The landlord applied for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities;
- a monetary award for unpaid rent pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants applied for:

- a cancellation of the landlord's notice to end tenancy pursuant to section 55 of the *Act*;
- a Monetary Award for damage or loss under the tenancy pursuant to section 67 of the *Act*;
- an order directing the landlord to comply with the *Act* pursuant to section 62;
- an order directing the landlord to provide services or facilities required by law pursuant to section 65 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both of the tenants and the landlord appeared at the hearing. The tenants were represented at the hearing by tenant J.Y. All parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenants acknowledged receipt of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice") in person on approximately November 7, 2017. Pursuant section 88 of the *Act*, the tenants are found to have been served with the 10 Day Notice in accordance with the *Act*.

Both of the tenants and the landlord acknowledged receipt of each other's applications for dispute resolution. I find that all parties were duly served with the other's application for dispute resolution.

Following introductory remarks, the tenants explained that they had vacated the property and were therefore no longer challenging the notice to end tenancy, or pursuing their order directing the landlord to comply with the *Act* or to provide services or facilities required by law.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can either party recover the filing fee?

Background and Evidence

A copy of the tenancy agreement supplied to the hearing as part of the tenants' evidentiary package showed that this tenancy began on August 1, 2017. This was a fixed term tenancy set to expire on January 31, 2018. Rent was \$225.00 per month, and a security deposit of \$120.00 collected at the outset of the tenancy continues to be held by the landlord.

The landlord explained that rent was in fact \$450.00 per month because the price listed on the tenancy agreement was "per room" and he said that the tenants rented 2 rooms. The landlord said that a 10 Day Notice to End Tenancy was served on the tenants because the tenants had failed to pay rent for September, October and November 2017. The tenants disputed that rent was due for this time period and argued that rent was in fact paid for the time period stated by the landlord. As part of their evidentiary package, the tenants provided un-translated documents in Mandarin which purported to show rent receipts for the rent periods in question.

Analysis

As the tenants have vacated the property and the landlord confirmed that he no longer required the Order of Possession. I will focus solely on the landlord's application for a monetary award for unpaid rent.

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 his entitlement to a monetary award.

The landlord did not produce an adequate application for a monetary award. No monetary order worksheet was completed and the landlord could not identify how much money he was seeking in his application. I find that the landlord did not produce sufficient evidence to show how much rent was to be paid each month, and could not produce consistent or detailed testimony on what was to be included with the rent. I find that the landlord has failed to show under section 67 of the *Act* that rent remained unpaid between the parties. For these reasons, I dismiss the landlord's application for a monetary award.

As both parties were unsuccessful in their application, both parties must bear the cost of their own filing fee.

Conclusion

The landlord's application for an Order of Possession and the tenants' application to cancel the notice to end tenancy are withdrawn.

The tenants' application directing the landlord to comply with the *Act* and directing the landlord to provide services or facilities required by law is withdrawn.

The landlord's application for a monetary award for unpaid rent is dismissed without leave to reapply.

Both parties must bear the cost of their own filing fees.

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: January 12, 2018

Residential Tenancy Branch