



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords - OPR, MNDCL-S, MNDL-S, MNRL-S, FFL

Tenant – CNR, OLC, FFT

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* (“*Act*”).

The landlords sought:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent, for money owed or compensation for damage or loss under the *Act* and for damage to the unit or property pursuant to section 67;
- authorization to retain all or a portion of the tenants’ security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant sought:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlords and Tenant R.M. (the tenant) attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord R.C. (the landlord) indicated that he would be the primary speaker for the landlords.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord testified that the Landlords’ Applications for Dispute Resolution (the Landlords’ Application) and evidentiary package was personally served to Tenant R.M. on November 15, 2017. The tenant confirmed that they received the Landlords’ Application and evidentiary

package. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was deemed served with the Applications and evidentiary package.

The tenant testified that the Tenants' Application for Dispute Resolution (the Tenants' Application) was personally served to the landlords on November 15, 2017. The landlord confirmed that they received the Tenants' Application. In accordance with section 89 of the *Act*, I find that the landlords were duly served with the Applications and evidentiary package.

The tenant testified that their evidentiary package was personally served to the landlords on January 10, 2018. The landlord confirmed that they received the tenants' evidence package on this day. In accordance with section 88 of the *Act*, I find the landlords are duly served with the tenants' evidence.

The tenant submitted a monetary claim within their evidence package but did not submit an Amendment to an Application for Dispute Resolution (the Amendment) to the RTB in accordance with Rule 4.1 of the RTB Rules of Procedure. Rule 4.2 of the RTB Rules of Procedure allows for an application to be amended at the hearing, but only in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased. I find that the tenant's amendment could not reasonably be anticipated and it would prejudice the landlord to accept the Amendment. For this reason, the tenants' Amendment for monetary compensation is dismissed, with leave to reapply.

The landlord submitted a second evidence package to the Residential Tenancy Branch (RTB) on December 15, 2017, which contained a Monetary Order Worksheet, Condition Inspection Report and an Invoice for carpet cleaning.

The tenant testified that they had not received the Condition Inspection Report or any other evidence from the landlord after the first evidence package was served with the Landlords' Application.

The landlord admitted that they did not have the tenants' forwarding address.

Rule 3.3 of the RTB Rules of Procedure states that documentary evidence for a cross-Application, that is intended to be relied on at the hearing, must be received by the other party not less than 14 days before the hearing. I find that the landlord did not serve the tenants with their second evidence package and that the tenants may be prejudiced by this as they did not have a chance to respond to the landlords' evidence. For this reason the landlords' second evidence package is not accepted for consideration.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award for unpaid rent, for money owed or compensation for damage or loss under the *Act* and for damage to the unit or property?

Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order?

Are the landlords entitled to recover the filing fee for the landlords' application from the tenants?

Background and Evidence

The landlord gave written evidence that this fixed term tenancy began on June 15, 2017, with a monthly rent of \$1,000.00, due on the first day of the month. The landlord testified that they continue to retain a security deposit in the amount of \$500.00.

The landlord provided a Monetary Order Worksheet showing that they were seeking unpaid rent for November 2017 and December 2017 as well as loss of rent for January 2018 and the costs of cleaning the carpet, cleaning the rental unit and damage to the front door.

The landlord also provided copies of text messages exchanged between the landlord and the tenant.

The tenant provided copies of text messages exchanged between the landlord and the tenant that the tenant submits shows evidence of a verbal eviction notice from the landlord and the landlord's refusal to allow the tenant to sublet the rental unit for December 2017. The tenant submitted in her evidence package that she steam cleaned the carpets

The landlord submitted that on October 31, 2017, they talked with the tenant about an unreasonable number of occupants in the rental unit and a large dog that was not approved by the landlords as a part of their tenancy agreement. The landlord testified that they asked the tenant to remedy this situation and that the tenant responded to this request by not paying the November 2017 rent and then securing a new rental unit for December 2017. The landlord stated that the tenant vacated the rental unit and gave the keys back to them on December 02, 2017.

The landlord testified that they are only seeking the unpaid rent for November 2017 and December 2017 totalling \$2,000.00, the filing fee for the Landlords' Application in the amount of \$100.00, as well the cost of having the carpets professionally cleaned due to the dog hair in the amount of \$315.00.

The tenant submitted that the landlord gave her a verbal eviction notice on October 31, 2017, and that the tenant needed the money for November 2017 rent to secure a new rental unit. The tenant submitted that the landlords prevented her from securing a new tenant for the unit for December 2017 which would mitigate the loss of unpaid rent.

Analysis

I find that the landlord has not established service of the Landlords' Application to Tenant P.M. and for this reason I dismiss the Landlords' Application naming Tenant P.M. as a respondent, without leave to reapply.

As the landlord and the tenant agreed that the tenant has moved out of the rental unit as of December 02, 2017, I dismiss the Tenants' Application to cancel the 10 Day Notice and to have the landlords comply with the *Act*, without leave to reapply. As the tenants have not been successful in their Tenants' Application, I dismiss their request to recover the filing fee, without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel a notice to end tenancy, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*. The landlord testified that the tenant has vacated the rental unit and they do not require an Order of Possession.

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.

Although the tenant submitted that she had the carpets steam cleaned, I find that the tenant did not provide any evidence that this was actually done. I accept the landlord's testimony that they had the carpets professionally cleaned, due to the dog hair in the rental unit, in the amount of \$315.00.

I find the landlord has no duty to mitigate the loss of rent for December 2017 as the earliest date that a legal notice to end the tenancy that could have been effective, if given by the tenants in November 2017 when the tenant did not pay the rent, would have been December 31, 2017 as per section 45 (2) (a) of the *Act*.

Based on the written evidence, affirmed testimony and the above, I find that the landlord is entitled to a monetary award of \$2,315.00 against Tenant R.M. for unpaid rent owing for this tenancy for November 2017, December 2017, and the cost of having the carpets professionally cleaned.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord has been successful in their application, I also allow them to recover their filing fee from Tenant R.M.

Conclusion

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlords' favour against Tenant R.M. under the following terms, which allows the landlords to recover unpaid rent, to recover the costs of having the carpets professionally cleaned, to retain the tenants' security deposit and to recover the filing fee:

Item	Amount
Unpaid November 2017 Rent	\$1,000.00
Unpaid December 2017 Rent	1,000.00
Cost for Professional Carpet Cleaning	315.00
Less Security Deposit	-500.00
Filing Fee for this application	100.00
Total Monetary Order	\$1,915.00

The landlord is provided with this Order in the above terms and the tenant(s) must be served with 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: January 23, 2018

Residential Tenancy Branch