



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR FFL
 FFL MNDCL-S MNDL-S MNRL-S

Introduction

This hearing was convened by way of conference call concerning 2 applications made by the landlord which have been joined to be heard together. The first application was made via the Direct Request process and seeks an Order of Possession and a monetary order for unpaid rent or utilities in the amount of \$1,700.00 and to recover the \$100.00 filing fee from the tenant for the cost of the application. The other seeks \$16,000.00 for unpaid rent; damage to the unit, site or property; and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant.

The landlord attended the hearing, gave affirmed testimony, and provided evidentiary material in advance of the hearing. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call. The landlord testified that the tenant was personally served with the hearing packages on December 20, 2017 and January 9, 2018, respectively. I accept that testimony, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing, the landlord withdrew the application for an Order of Possession.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent?

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Should the landlord recover filing fees for both applications?

Background and Evidence

The landlord testified that this fixed-term tenancy began on June 1, 2017 and was to expire on June 1, 2018 at which time the tenant was required to vacate the rental unit, but the landlord would not have required that. The tenant actually vacated the rental unit on December 20, 2017. Rent in the amount of \$1,700.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$850.00 as well as a pet damage deposit in the amount of \$150.00, both of which are still held in trust by the landlord. A copy of a tenancy agreement has been provided, which names a different landlord than the Landlord's Application for Dispute Resolution, and the landlord testified that the person named as landlord in the tenancy agreement is the landlord's caretaker. The rental unit is a single family dwelling in a strata neighbourhood.

The landlord further testified that the tenant failed to pay rent when it was due in December, 2017 and the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing. It is dated December 2, 2017 and contains an effective date of vacancy of December 12, 2017 for unpaid rent in the amount of \$1,700.00 that was due on December 1, 2017. The tenant has not paid any rent since, and has not served the landlord with an Application for Dispute Resolution disputing the notice, and moved out on December 20, 2017.

The parties had conducted a move-in condition inspection report at the beginning of the tenancy, but the landlord lost his copy. At move-out, the tenant agreed to participate in a move-out condition inspection, but left with the moving truck saying she would return but failed to do so, and the landlord's caretaker completed the inspection in the absence of the tenant.

The tenant left numerous damages to the rental unit, including holes in walls that the tenant attempted to repair but had to be re-done. The landlord has provided a copy of an estimate for general repair setting out numerous items. The landlord has also provided a

Monetary Order Worksheet setting out a claim for damages in the amount of \$15,330.00 from the estimate; \$575.00 estimate for replacing window coverings; \$3,400.00 for December, 2017 and January, 2018 rent. Less the security deposit and pet damage deposit, the landlord claims a difference of \$18,305.00. The landlord was unable to re-rent the rental unit for January, 2018 due to the damages left by the tenant. The tenant also was permitted 1 pet, but had 3 cats and at least 1 dog. The yard and door jams were damaged by the dog(s) and the pets urinated on all floors and carpets. Photographs have also been provided for this hearing.

The landlord also testified that the repairs listed in the estimate provided have all been completed but the final bill has not been received and will differ somewhat. The estimate includes painting, which actually cost less than the estimate, and the rental unit had last been painted 6 years ago. The rental unit has been re-rented for February 1, 2018, although the new tenants actually moved in earlier.

I accept the undisputed testimony of the landlord that the tenant failed to pay any rent for the month of December, 2017 and the landlord has established a claim of **\$1,700.00**. Therefore, I order the landlord to keep the \$850.00 security deposit in partial satisfaction of that claim.

Where a party makes a monetary claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In the absence of any move-in or move-out condition inspection reports, I am left with the testimony of the landlord with respect to damages, the photographs and the estimate.

The estimate includes \$3,300.00 for painting and an additional \$900.00 for filling and sanding, however I refer to the Residential Tenancy Policy Guidelines that puts interior paint at 4 years. The landlord testified that the rental unit had not been painted in 6 years, and therefore the landlord's claim for painting cannot succeed.

The photographs provided show 2 small separate piles of garbage, and I question why the estimate shows \$350.00 as well as an additional \$750.00 for taking away carpet, underlay and damaged doors. I also question whether or not the charge of moving the appliances

into the garage at \$150.00 is the responsibility of the tenant, or that the claim is reasonable for cleaning them.

Considering the photographs, I am satisfied that the landlord has established **\$600.00** for repairing baseboards and door frames, but the photographs do not depict any damaged doors. I also accept the landlord's testimony that the tenant's pets damaged the door jams, and I order that the landlord keep the \$150.00 pet damage deposit.

The photographs show missing light bulbs in the bathroom, but not damaged light fixtures or smoke detectors.

With respect to flooring, the landlord testified that the actual costs will differ from the estimate, and actual costs are not yet available for some items in the estimate. I find that the landlord has failed to establish element 3 in the test for damages. The same applies to the claim of \$50.00 for missing weather stripping and \$575.00 for window coverings.

I accept the undisputed testimony of the landlord with respect to cleaning, which is corroborated by the photographs. A tenant is required to leave a rental unit reasonably clean, and I find the tenant did not do so. I find the claim of **\$300.00** is reasonable and I allow the claim.

I am not convinced that the landlord has established that the yard and fence were the responsibility of the tenant or the condition of either at the beginning of the tenancy and I dismiss those claims.

With respect to loss of rental revenue, and having found that the landlord has not established that the flooring and painting and some of the other repairs were completed as a result of the tenant's failure to comply with the *Act* or the tenancy agreement, and considering that the tenant moved out of the rental unit and the landlord had possession of it on December 20, 2017, I cannot be satisfied that the landlord would not have been able to re-rent the rental unit sooner as a result of the tenant's failure to comply with the *Act* or the tenancy agreement.

Where a party is successful with an application the party is usually entitled to recovery of the filing fee. In this case, the landlord served a notice to end the tenancy on or about December 2, 2017 and applied for an Order of Possession and a monetary order for unpaid rent on December 9, 2017. A notice of hearing was generated by the Residential Tenancy Branch on December 20, 2017 which was served on the tenant the same day, and the tenant moved out that day. On January 9, 2018 the landlord filed the second Application for Dispute Resolution seeking monetary compensation for damage or loss in addition to the unpaid rent, and the 2 applications were joined to be heard together. The

landlord made the first application prior to the date the tenant was required to vacate the rental unit according to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Then the landlord made the second application on the same day that the tenant moved out. In both cases, I find that the landlord made the applications prematurely, and should only be successful in recovery of one filing fee in the amount of **\$100.00**.

Having found that the landlord has established claims of \$1,700.00 for December, 2017 rent; \$900.00 for damages; and recovery of filing fees of \$100.00, I order that the landlord keep the \$850.00 security deposit and \$150.00 pet damage deposit in partial satisfaction, and I grant a monetary order in favour of the landlord for the difference in the amount of **\$1,700.00**.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$850.00 security deposit and the \$150.00 pet damage deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$1,700.00**.

This order is final and binding and may be enforced.

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: February 06, 2018

Residential Tenancy Branch