



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, CNC, CNR, OLC, LRE, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party, I am satisfied that both parties have been properly served.

Preliminary Issue

It was clarified with both parties that the two named landlords' were father and son and both act as the landlord. It was also clarified with both parties that the two rental addresses should be amended as there was no separate address noted for the basement. Both parties agreed and no further issues were raised.

At the outset both parties confirmed that the tenant had vacated the rental unit. The tenant claims she returned possession to the landlord on December 31, 2017 at midnight, but the landlord claims that he was not in possession until January 2, 2018. As such, the landlord has cancelled his request for an order of possession (OPR). The tenant has also cancelled her entire application as possession is no longer an issue (CNC, CNR, LRE, OLC). The hearing shall proceed on only the landlord's monetary claim.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and damage(s)?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that there was no signed tenancy agreement. The landlord claimed that the monthly rent was \$1,350.00. Both parties agreed that no condition inspection report(s) were completed by both parties for the move-in or the move-out.

The landlord seeks a monetary claim of \$7,650.00 which consists of:

\$26,260.50	Damages to Rental Unit
\$500.00	Unpaid Utilities
\$4,050.00	Unpaid Rent/ Loss of Rental Income

It was clarified with both parties that the landlord's monetary claim would be limited to the amount filed of \$7,650.00 as no amendment to an application was filed and served to the tenant.

The landlord claimed that the tenant vacated the rental unit leaving it damaged and un-rentable and as well has failed to pay utilities and rent owed. The landlord has submitted 144 photographs showing the condition of the rental unit;

A screen shot of an email (which appears to be a text message) describing an estimate:

\$8,500.00	Replace Cork flooring
\$4,200.00	Replace Carpet
\$1,000.00	Drywall Repair
\$8,000.00	Paint Apartment
\$800.00	Repair Tile Flooring
\$1,000.00	Repair/Replace closet doors
\$300.00	Replace interior door
\$100.00	Replace blind
\$200.00	Replace cabinet door
\$100.00	Repair Shelves
\$200.00	Repair Toilet
\$100.00	Replace screen
\$50.00	Repair cat door
\$500.00	Replace cat door
\$10.00	Replace vent
\$250.00	Final Clean up
\$25,010.00	Subtotal cost of repairs
\$1,250.00	50 GST
\$26,260.50	Total

The landlord claims that this is a quote from a contractor, but has not provided any details of the contractor.

The tenant disputes the landlord's claims stating that no cleaning was done, but that damage was caused by cats of which the tenant did not own. The tenant argued that the previous occupants had cats. The tenant did confirm that a hole in the drywall was caused by the tenant.

The landlord claims \$500.00 in unpaid utilities. The tenant disputes this claim stating that the utilities were paid. The landlord did not provide any invoices for unpaid utilities, but stated that the average monthly utility bill is \$600.00 of which the tenant is responsible for paying ½.

The landlord seeks a claim of \$4,050.00 for unpaid rent/loss of rental income. The landlord claims that the tenant failed to pay rent for:

\$1,350.00	Unpaid Rent November 2017
\$1,350.00	Unpaid Rent December 2017
\$1,350.00	Unpaid Rent/Loss of Rent January 2018

The landlord stated that this is based upon the 10 Day Notice dated November 24, 2017.

Both parties confirmed that the landlord served the 10 Day Notice dated November 24, 2017 by posting it to the rental unit door on November 24, 2017. The landlord confirmed this by filing a copy of a photograph showing a 10 Day Notice posted to a door. The 10 Day Notice states that the tenant failed to pay rent of \$250.00 that was due on November 1, 2017 and \$400.00 in unpaid utilities following a written demand delivered on November 1, 2017. The 10 Day Notice sets out an effective end of tenancy date of December 4, 2017.

The landlord was unable to clarify the \$4,050.00 claim for unpaid rent when the 10 Day Notice stated that \$250.00 in unpaid rent was owed. The landlord stated that he was "not sure".

The landlord stated that there were no records kept such as a tenant ledger detailing the rent owed, how much and when rent was paid.

It was noted during the hearing that the landlord's application for dispute disclosed a request for a monetary claim of \$2,650.00 for unpaid rent and mentions \$600.00 owed for November 2017 and Unpaid Rent of \$1,350.00 for December. The application states that unpaid utilities owed for November 2017 are \$350.00 and expected utilities will be at least \$350.00 for December 2017.

Analysis

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 landlord has made a claim of \$7,650.00 which consists of:

\$26,260.50	Damages to Rental Unit
\$500.00	Unpaid Utilities
\$4,050.00	Unpaid Rent/ Loss of Rental Income

I find on a balance of probabilities that the landlord has failed in his monetary claim for damages. The landlord has claimed that the tenant caused damage to the rental unit relying on the submission of 144 photographs. The tenant has disputed this stating that damage was pre-existing prior to her moving in. Both parties acknowledged that there is no condition inspection report or any other evidence to show the condition of the rental unit prior to the tenancy beginning. As well, the landlord relies upon an “estimate” provided in the form of an email, but the “estimate” fails to disclose who the contractor is. The landlord’s claim for damage(s) are dismissed.

On the landlord’s second claim of unpaid utilities, the landlord has only provided that the tenant is responsible for ½ of the utilities and has not provided any basis for the \$500.00 in unpaid utilities. The only evidence provided by the landlord is a reference to a \$400.00 amount owed on the 10 Day Notice dated November 24, 2017. I also note that the landlord’s original application for dispute mentions an unpaid utility of \$350.00 for November 2017 with a further expected \$350.00 for December 2017. I find that the landlord has provided inconsistent and contradictable details on the issue of unpaid utilities. The landlord was unable to clarify this during the hearing. The landlord’s claim for unpaid utilities is dismissed.

On the landlord’s third and final claim of \$4,050.0 in unpaid rent/loss of rental income, I find that the landlord has failed to provide sufficient evidence. During the hearing the landlord clarified a monetary claim of \$4,050.00 for unpaid rent/loss of rental income for November 2017, December 2017 and January 2018 at \$1,350.00 per month. However, the 10 Day Notice for Unpaid Rent sets out that unpaid rent of \$250.00 was owed for November 2017 and the landlord’s written submissions for the application for dispute provide for unpaid rent of \$600.00 for November 2017. The landlord maintained that no record keeping was done to record rent such as in a tenant ledger. I find that without further clarification or details on the amount of unpaid rent/loss of rental income, the landlord has failed to provide sufficient evidence. The landlord’s claim for unpaid rent/loss of rental income is dismissed.

Conclusion

The tenant's application was cancelled as she has vacated the rental property.
The landlord's monetary claim is dismissed without leave to reapply.

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 20, 2018

Residential Tenancy Branch