



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, FFT, FFL, MNDL-S, MNRL-S, MNDCL-S

Introduction

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

The landlord applied for:

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant HM primarily spoke for both co-tenants (the "tenant").

Initially, I was scheduled to hear only the tenants' application today. The landlord's application was originally scheduled to be heard on August 20, 2018. The parties requested that I bring the matters together so that both could be heard together. The tenants testified that they had received the landlord's application for dispute resolution and were prepared to proceed. Pursuant to 2.10 of the Rules of Procedure, as I find that both applications pertain to the same residential property, involve the same parties, and similar evidentiary matters would be

considered for each application I ordered that the matters be brought together and heard at once.

At the outset of the hearing the tenants testified that they had moved out and withdrew their application in its entirety.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee for the application from the tenants?

Background and Evidence

This fixed term tenancy began in June, 2017 and was scheduled to end in June, 2018. The monthly rent was \$2,592.00 payable on the first of the month. The tenants paid a security deposit of \$1,250.00 which is held by the landlord.

The tenants informed the landlord that they would be moving out of the rental unit on November 29, 2017 and vacated December 21, 2017. The tenants testified that there were a number of deficiencies with the rental unit which the landlord did not fix and they moved out because of the issues.

The tenants did not pay the full monthly rent for December, 2017. The tenants paid \$1,719.00 towards the December, 2017 rent in a number of installments. The tenants requested the landlord apply the security deposit towards the remaining amount owed for December rent. The landlord did not consent to use the security deposit for rent. The landlord testified that the amount of rent arrears is \$873.00. The tenants disagreed with the amount and said that based on their calculations of what was paid the actual arrears should be less.

The landlord did not consent to the tenancy being ended prior to the date provided on the tenancy agreement. The tenants provided the landlord with a Mutual Agreement to End Tenancy but the landlord did not consent and sign. The landlord said that after the tenants vacated the rental unit, they have advertised the suite but have been unable to get a new occupant as at the time of the hearing.

The landlord testified that the tenants caused considerable damage to the rental unit and is seeking a monetary award for repairs. The landlord submitted into written evidence photographs, estimates and invoices in support of her monetary claim for damages. The landlord testified that the total amount she is seeking for damages is \$3,457.33.

The tenants disagree with the landlord's evidence and say that most of the damage is attributable to the landlord or were present when the tenancy started. The tenants submitted

that the landlord failed to make repairs during the tenancy and that the damage to the rental unit is the responsibility of the landlord.

Analysis

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality I find the landlord to be a more credible witness than either of the tenants. The landlord provided consistent, logical testimony which was supported with documentary evidence where available. The landlord admitted when she could not recall specific facts and, where appropriate, referred to her notes and documents prepared prior to this hearing to assist her recollection.

The tenant was argumentative, focused on irrelevant matters and conducted himself in an agitated and irrational manner. I found that much of the tenant's submissions to have little to do with the matter at hand and was concerned with attacking the landlord and making himself appear to be the wronged party. When given the opportunity to cross-examine the landlord the tenant chose to ask irrelevant personal questions rather than any substantive matter. Towards the conclusion of the hearing the tenant continually interrupted the landlord's testimony, shouting disagreement with her evidence.

Based on the foregoing, where the evidence of the parties clashed I found that the landlord's version to be more credible and consistent with how a reasonable person would behave.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

Pursuant to section 26(1) of the *Act*, a tenant must pay rent when due whether or not the landlord complies with the *Act*. While the tenant testified about deficiencies with the rental unit and the dangerous condition of the rental unit I find the tenant's contentions to be spurious and not supported in documentary evidence. Even if I were to accept the tenant's testimony the *Act* states that would not permit the tenant from paying the full rent owed.

Accordingly, I find that the tenants were obligated to pay the full rent of \$2,592.00 on December 1, 2017. I accept the evidence of the parties that the tenants failed to pay the full rent. While

the landlord testified at the hearing that the rental arrears is \$873.00, in her written submissions she calculates the arrears as \$831.89. As the landlord expressed some doubt about the figure she provided in her testimony and the tenant disputed the \$873.00 amount, I find that the figure provided in her written submissions to more likely be accurate.

The tenant said that he authorized the landlord to apply the security deposit towards the rental arrears. However, section 21 of the *Act* states that, “unless the landlord gives written consent, a tenant must not apply a security deposit as rent”. The landlord testified that she did not consent to the use of the security deposit for rent. Accordingly I find that the security deposit was not used towards rent.

I find that there is an arrear of \$831.89 for the December, 2017 rent.

Section 7 of the *Act* explains, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.” In this case, the tenants informed the landlord on November 29, 2017. I accept the evidence that the landlord took steps to seek a new tenant by posting listings online and doing showings. I find that the landlord took reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

I do not find that there is sufficient evidence in support of the tenants' position that the early end of the tenancy was agreed upon by the landlord. While the tenants submitted into written evidence a copy of a Mutual Agreement to End Tenancy form, it is not signed by the landlord and the landlord disputes that such an agreement was made. The tenants cannot unilaterally choose to break a fixed term tenancy and force the landlords to enter a mutual agreement.

I accept the landlord's testimony that the landlord suffered a loss of the rent due to the tenant's breach of the tenancy agreement. I further accept that despite the landlord taking reasonable efforts the rental unit has not yet been rented out. Therefore, I find that the landlord is entitled to a monetary award in the amount of \$5,184.00, the equivalent of the rent for the months of January and February, 2018.

I accept the landlord's evidence that the rental unit required repairs and cleaning after the tenant vacated. The landlord's claim for a monetary award is sufficiently supported in her documentary evidence. I do not find the tenant's testimony that the damages were present to be credible.

The landlord submitted as part of the documentary evidence a condition inspection report signed by the parties at the start of the tenancy. The report does not make mention of the issues now being claimed. I find the tenant's testimony that the landlord failed to make needed repairs throughout the tenancy to not be supported in the evidence.

Furthermore, I find the tenant's testimony that they were not provided with an opportunity to perform cleaning themselves as they were issued a 10 Day Notice to unpersuasive. The tenants were obligated under the tenancy agreement to pay their rent for December, 2017. They chose not to pay the full amount required under the agreement. The landlord issued a 10 Day Notice, in accordance with the *Act*. The landlord was not obligated to allow the tenants to remain in the rental unit without proper payment or to allow them additional time to perform cleaning and repairs.

Based on the documentary evidence and her testimony, I find that the landlord has successfully shown on a balance of probabilities that the damage to the rental unit were caused by the tenants. I find that the tenants breached the agreement and they are responsible for the damages and loss flowing from their breach.

I find that the landlord suffered damages and loss as a result of the tenant's violation. I accept the documentary evidence and testimony that the amount of the losses suffered is \$3,457.33. Accordingly, I issue a monetary award in the landlord's favour for that amount.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$1,250.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

As the landlord's application was successful the landlord is entitled to recover the \$100.00 filing fee of this application.

Conclusion

The tenants' application is withdrawn.

I issue a monetary order in the landlord's favour in the amount of \$8,323.22 under the following terms, which allows the landlords to recover unpaid rent, damages and the filing fee for their application:

Item	Amount
Unpaid Rent December, 2017	\$831.89
Loss of Rent January- February, 2018	\$5,184.00
Damages and Loss	\$3,457.33
Filing Fees	\$100.00

Less Security Deposit	-\$1,250.00
Total Monetary Order	\$8,323.22

The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: February 22, 2018

Residential Tenancy Branch