



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNDCL-S, MNRL-S,

Introduction

This decision pertains to the Landlord's application for dispute resolution made on February 13, 2018, under the *Residential Tenancy Act* (the "Act"). The Landlord seeks the following relief:

- an order of possession for unpaid rent;
- an order for money owed or compensation for damage or loss;
- an order permitting the landlord to retain all or part of a security deposit to be applied against a monetary claim for rent owed; and,
- an order granting recovery of the filing fee.

The Landlord attended the hearing before me and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Landlord's agent, a family member, (the "Agent") also attended and provided affirmed testimony. The Tenant did not attend the hearing.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application will be considered in my decision.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on January 29, 2018, indicating an end tenancy date of February 10, 2018, by leaving a copy of the Notice on the Tenant's door. Pursuant to section 90 of the Act, the Notice is deemed to have been received on the third day after it is attached to the rental unit door.

The Landlord testified that on February 16, 2018, the Notice of Hearing, along with other evidentiary documents, were served on the Tenant in person. I am satisfied that the

Landlord properly served the Tenant with the Notice of Hearing pursuant to section 89 (1) of the Act.

Issues

1. Is the Landlord entitled to an order of possession for unpaid rent?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to an order permitting the Landlord to retain all or part of a security deposit to be applied against a monetary claim for rent owed?
4. Is the Landlord entitled to a monetary order granting recovery of the filing fee?

Background and Evidence

The Landlord testified that a tenancy agreement was entered into between the Landlord and the Tenant on May 15, 2017, for a rental commencing June 1, 2017, and ending May 31, 2018. Monthly rent was \$1,800.00, due on the first day of each month, and the Tenant was responsible for paying 60% of the electricity bill. The Tenant paid a \$900.00 security deposit. The tenancy agreement was a written, one-page, unsigned agreement that included most, but not all, of the standard terms required by sections 12 and 13 of the Act. The tenancy agreement was submitted into evidence.

The rental unit consisted of a two-story house, with access to a shared common area of a lawn and grounds. The Landlord testified that the Tenant was permitted to keep three horses on the property during the tenancy.

The Landlord testified that the Tenant did not pay rent for February 2018 and March 2018, and therefore owes a total of \$3,600.00. The Agent testified that the Tenant did not pay hydro for a due date of January 22, 2018, in the amount of \$1,084.57 (60% of the \$1,807.62), and, did not pay hydro for a billing date of February 28, 2018, in the amount of \$1,062.82 (60% of \$1,771.36). Copies of two hydro bills were submitted into evidence in support of the Landlord's claim. The Landlord confirmed that the total amount claimed for unpaid rent and unpaid utilities is \$5,747.39.

On March 25, 2018, the Landlord and Agent testified that they visited the property and found most of the Tenant's property and furniture gone from the rental unit. All that remained were a pet bird and the horses. On March 31, 2018, the Landlord and the Agent sent text messages to the Tenant asking if they were still there, but the Tenant

did not respond. The Landlord returned on April 8, 2018, to ascertain the situation. The Tenant, the pet bird and the horses were gone.

The Landlord claims compensation for damage to the property, to both the rental unit and to the surrounding grounds. The claimed damage consisted of the following:

- a large dent in an exterior entrance door to the rental unit;
- a baseboard heater with a cracked LCD display screen and a broken cover;
- a damaged children's play swing set;
- damage to the lawn; and,
- damage to the property consisting of debris inside and outside the rental unit, and horse manure left on the grounds.

The Landlord submitted into evidence photographs. The photographs were taken on March 25, 2018. Also submitted into evidence were seven undated photographs of the interior and exterior of the rental unit taken at some point before the start of the tenancy. During their testimony, the Landlord said that they were unaware of the condition inspection report requirement under the Act. The Agent provided testimony that corroborated most of the Landlord's testimony.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Claim for Unpaid Rent and Utilities

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Pursuant to section 46 of the Act, the Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains that the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord testified, and provided documentary evidence to support their submission, that the Tenant did not pay rent when it was due, and has not paid rent for February 2018 and March 2018. Further, the Tenant did not pay utilities for the billing periods

noted above. There is insufficient evidence that the Tenant applied to cancel the Notice. Taking into consideration the evidence and unchallenged testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving their claim for monetary damages for unpaid rent and utilities and for an order of possession.

Pursuant to sections 46 and 55 of the Act, I grant an order of possession to the Landlord.

Pursuant to section 67 of the Act, I find that the Landlord is entitled to a monetary award for unpaid rent (\$3,600.00) and utilities (\$2,147.38) for February 2018 and March 2018. I order that the entire amount of the security deposit held (\$900.00) be applied to the award granted to the Landlord, and will grant an order for the balance, as explained below.

Claim for Property Damage

The Landlord seeks compensation for damage or loss with respect to the property.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due, and to establish the value of the loss or damage.

In determining whether compensation is due, an arbitrator must determine whether:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement,
2. loss or damage has resulted from this non-compliance,
3. the party who suffered the damage or loss can prove the amount of, or value of, the damage or loss, and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 32 (2) of the Act requires that a tenant “must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.” Further, section 32 (3) of the Act requires a tenant to “repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.” If a tenant does not comply with this section, a landlord may seek an order for

compensation under section 67 of the Act.

The Landlord and Agent testified, and provided photographs taken on March 25, 2018, in support of their submission, that the tenant damaged a baseboard heater, a door, a swing set, the lawn, and, also damaged the property by leaving various debris inside and outside the rental unit, including leaving horse manure on the grounds. The Landlord testified that when they returned on April 8, 2018, the damage remained.

I am satisfied, based on the undisputed evidence, that the damage to the heater, door, swing set, and debris (including horse manure) left inside and outside the rental unit, has resulted from the Tenant's non-compliance with sections 32 (2) and 32 (3) of the Act. Further, I note that the tenancy agreement included the term "no dumping garbages on the property." [*Reproduced as written.*] The Landlord provided copies of a hardware store online catalogue page showing a replacement heater of the same type as the one damaged of having a price of \$110.00. Similarly, a copy of an online catalogue page for a replacement exterior door similar to the one damaged indicated a cost of \$299.00, and a replacement swing set in the amount of \$129.00. I am satisfied that by replacing these items, the Landlords would be put back in the same position as if the damage had not occurred.

The Landlord provided testimony and documentary evidence regarding an estimate to rent a 30 yard disposal bin in the amount of \$650.00. The documentary evidence is from an online webpage of a dumpster rental and bin company. Based on the amount and type of debris (excluding the horse manure) depicted in the photographs, I find a rental of this size of bin to be a reasonable cost for cleanup of the debris.

Regarding the claim for damages resulting from horse manure being left on the property, the Landlord was unable to provide any compelling evidence as to how they suffered a loss or damage. While it is reasonable to accept that the Tenant should clean up after their horse, or other animal, without evidence ascertaining actual loss or damage, I cannot determine the amount of compensation. Given that the Landlord has proven an infraction of a legal right, but has not proven any significant loss or damage, I award nominal damages of \$50.00, on this specific claim.

Regarding the claim for damages to the lawn, there is insufficient evidence before me to find that the Tenant caused damage to the lawn. As noted above, the Landlord provided a photograph taken on March 25, 2018, a particularly rainy time of year when lawns often become muddy. It is unreasonable to expect a lawn to remain pristine if a person walks about the lawn during the rainy season. For this reason, I do not find that the Tenant failed to comply with the Act, regulation or tenancy agreement, and dismiss the Landlord's specific claim for damages to the lawn.

Having determined that the Landlord suffered the above-noted damages, I must now determine whether the Landlord has acted reasonably to minimize that damage or loss.

Sections 23 and 35 of the Act require a landlord to complete an inspection condition report at the start of, and at the end of, a tenancy. By not completing the report, a landlord puts themselves in a difficult position of not being able to prove the existence or extent of damage or loss caused by a tenant. The report provides an important source of “before and after” information not found elsewhere, including photographs. Completing a report is a reasonable step in minimizing any potential damage or loss.

The Landlord and Agent testified that they failed to complete an inspection condition report either at the start of, or at the end of, the tenancy. As such, I do not find that the Landlord has acted reasonably to minimize the claimed damage or loss, and reduce the amount successfully claimed by half, excluding the nominal damages.

For the reasons set out above, I find that the Landlord is entitled to a monetary claim for compensation for damage or loss to property in the amount of \$644.00. (\$110.00 baseboard heater + \$299.00 door + \$129.00 swing set + \$650.00 bin = \$1,188.00 – 50% = \$594.00. Plus nominal damages of \$50.00)

Claim for Recovery of Filing Fee

I find the Landlord is entitled to recover the \$100.00 filing fee.

Summary of Monetary Claim

A total monetary of award of \$5,591.38 is calculated as follows:

Claim	Amount
Unpaid rent	\$3,600.00
Unpaid utilities	\$2,147.38
LESS security deposit	(\$900.00)
Reduced claim for damage to property	\$594.00
Nominal damage for horse manure	\$50.00
Filing fee	\$100.00
Total:	\$5,591.38

Conclusion

The Landlord is successful with their application and are hereby granted an order of possession for unpaid rent.

The Landlord is successful with their application and are hereby granted a monetary order for money owed, for compensation for damage or loss, and for the filing fee, in the amount of \$5,591.38.

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: April 17, 2018

Residential Tenancy Branch