



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOON CONSTRUCTION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR OPR MNR MNDC RPP FF

Introduction

DECISION/ORDER AMENDED PURSUANT
TO SECTION 78(1)(A) OF THE RESIDENTIAL
TENANCY ACT ON May 25, 2018 AT THE
PLACES INDICATED.

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 and 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 originally applied pursuant to the *Act* for: cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; a monetary order for damages as a result of the landlord's actions pursuant to section 67; and that the landlord make repairs to the rental unit pursuant to section 33.

At the hearing, the tenant (in attendance) provided undisputed testimony that the tenants had vacated the rental unit on or before March 1, 2018. The tenant withdrew the application to cancel the landlord's Notice to End Tenancy and for an order that the landlord make repairs to the unit. The landlord withdrew the application for an Order of Possession. The landlord and the tenant continued with their monetary claims each other.

A representative for both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant was assisted by her son during this hearing. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Preliminary Matter

The landlord sought to amend the application for a monetary order against the tenant to include compensation for damage to the rental unit at the end of the tenancy. The landlord submitted an amendment to her application by fax the evening prior to this hearing. An applicant is entitled to apply for an amendment prior to the hearing date and in a manner that allows the respondent to know the nature of the amendment (addition to their application).

At the hearing, the tenant and her assistant testified that, while they were aware that the landlord had told them that the landlord would seek compensation for damages, they had not been provided by a comprehensive breakdown or enough evidence to mount a response to the landlord's claim. As the tenants did not have a sufficient and fair opportunity to accept or respond to the landlord's amendment application, I find that the landlord's request to amend the application should be dismissed. The landlord made the application to amend their monetary application well after the allowable time period to submit an amendment had passed and over one month after the end of this tenancy. For this reason and since the landlord did not include damage to the rental unit in her original application, the landlord's application for amend the amount of the landlord's monetary claim to include damage to the rental unit is dismissed.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the \$100.00 filing fee?

Is the tenant entitled to a monetary order for damages against the landlord?

Background and Evidence

This tenancy began on April 1, 2017 and continued on a month-to-month basis with a rental amount of \$1200.00 payable on the first of each month. The evidence before me shows a security deposit for \$1200.00 paid at the outset of this tenancy. The landlord did not dispute that a security deposit in the full rental amount had been paid by the tenants at the outset of the tenancy. The tenants have vacated the rental unit. The landlord continues to hold the tenants' security deposit.

The landlord testified that a Notice to End Tenancy for Unpaid Rent was issued to the tenant after she failed to pay the full month of January 2018 leaving \$70.00 unpaid. The

landlord testified that the \$70.00 rental arrears from January 2018 remains outstanding. The landlord submitted a copy of a mutual agreement to end tenancy effective February 5, 2017. The landlord provided undisputed testimony that the tenant remained in the rental unit during February 2017 but did not pay rent in February 2017 prior to vacating the rental unit. The landlord also issued a 1 Month Notice to End Tenancy for Cause when the tenant failed to vacate the rental unit in accordance with the mutual agreement to end tenancy. The tenant ultimately vacated the rental unit on March 1, 2017.

The landlord applied to recover \$70.00 unpaid rent from January 2018 and the entire \$1200.00 unpaid rent from February 2018. The landlord submitted a monetary order worksheet with the landlord's costs for this tenancy particularized. As well as \$1270.00 in unpaid rent and \$152.00 in unpaid utilities, the landlord referred to costs including but not limited to \$1000.00 to repair a door frame, fill holes in walls and ceilings, paint the unit and hire a cleaner at the end of the tenancy. As stated above, the landlord's application for damage to the unit is dismissed. At this hearing, both parties indicated they wished to apply for a larger amount against the other party for the necessity of litigation (having a hearing) and for 'aggravation'. I dismiss both parties' applications for an amount in excess of the original applications and for irritation by the other party. These are not compensable expenses.

The tenant denies that any rent remained unpaid and owed to the landlord. The tenant submitted several cheques as evidence at this hearing. The tenant and her assistant (son) pointed to the receipts submitted as evidence of their payment of rent. The tenant testified that the landlord required her to pay first and last months' rent at the outset of the tenancy and therefore she did not need to pay rent the last month of her tenancy (February 2018). The tenant explained that in referring to 'first and last months' rent, she is describing that the landlord took double the security deposit amount allowed by the Act – that the landlord held \$1200.00 (a full months' rent) instead of \$600.00 (a half months' rent).

The tenant provided undisputed testimony that she provided her forwarding address to the landlord on March 21, 2018. The tenant provided a monetary worksheet showing compensation sought from the landlord in the amount of \$1000.00 as follows,

- \$500.00 in an increased in estimate moving costs as a result of the landlord's obstruction and delay of the move-out process; and
- \$500.00 for a garden table that the tenant was unable to retrieve from the rental unit - submits the landlord prevented the tenant from recovering.

The tenants also applied to recover the \$1200.00 security deposit that the landlord continues to hold. During her testimony, the tenant also suggested she was seeking \$1200.00 for 'aggravation' as a result of the landlord's behaviour during the course of the tenancy. The tenant (in attendance at this hearing) did not submit documentary materials or indicate in her application the reasons for the 'aggravation'.

The tenant (at this hearing) and her son both testified that her \$900.00 moving costs would have been substantially less if the landlord had not regularly intervened, blocked the movers from moving items out of the home and generally slowed down the entire moving process. She sought to recover \$500.00 of the \$900.00 in moving costs from the landlord. The tenant did not submit a copy of a moving invoice.

The tenant testified that a table of hers remains at the rental unit because the landlord would not allow her access to the unit to remove. She testified that, after she moved out, the landlord would not allow her back into the rental unit although she had paid rent for the entire month of February 2018. The tenant testified that she became uncomfortable meeting with the landlord and therefore did not return the keys to the rental unit until March 21, 2018.

The tenant testified that, in the final month of her tenancy (February 2018), the landlord turned off her heat and hot water. The landlord alleged that her applications and this hearing would not have been necessary but for the actions of the tenant – therefore, the landlord's time and expenses for this application should all be compensated by the tenant.

The landlord testified that the table is still at the rental property and the tenant's son testified that he would pick up the table. She testified that the son can still pick up the table at the rental property. I order the landlord to allow the tenant to attend and pick up the garden table from the rental unit premises.

The landlord denied that he disrupted the moving process when the tenant was vacating the rental unit. The landlord testified, however, that there had been a recent snowfall and he had to restrict the way in which the movers moved the tenants' belongings out of the rental unit and express safety concerns during the process.

Analysis

While I have considered all the documentary evidence, including photographs, letters and e-mails, as well as the testimony of all of the parties attending this hearing, not all

details of the respective submissions and / or arguments are reproduced in this decision. I have provided a synopsis of the submissions of the parties above in 'background and evidence' and, in this section, I will address the principal aspects of both party's claims. My findings around each portion of the tenants' and landlord's claims are set out below.

With respect to the landlord's claim for unpaid rent, I rely on the testimony of the landlord as well as the Notice to End Tenancy for Unpaid Rent issued to the tenant that shows she failed to pay the full month of January 2018 leaving \$70.00 unpaid. I accept the testimony of the landlord that \$70.00 rental arrears from January 2018 remains outstanding. I accept the evidence of the landlord, on a balance of probabilities, that the tenant did not pay rent for February 2018. The tenant did not provide sufficient rebuttal evidence to show that she had paid the \$70.00 or the final months' rent (February 2017) in the amount of \$1200.00. I find that the landlord is entitled to \$1270.00 in unpaid rent from the tenant. I note that the tenant is correct in stating that the landlord overcharged the tenant for her security deposit. Pursuant to section 72, the landlord is entitled to keep \$1200.00 in security deposit to offset the amount of unpaid rent.

I accept the testimony of the tenant that the landlord delayed the moving process for the tenant. The landlord candidly conceded that the landlord prohibited the movers from taking items out of the home in a manner that the landlord considered unsafe and spent time, during the moving day, to advise where he would allow the movers to work. In these very particular circumstances, where the landlord admitted to his presence at the rental unit on the day of the move and also admitted to restricting certain aspects of the mover's plans, I find that the tenant is entitled to an amount towards the cost of the movers. While section 67 of the Act requires a claimant to provide proof of their loss, the tenant did not produce evidence (bill/invoice) from the movers or other evidence of her expenditure. In these circumstances, I find that the tenant is entitled to nominal amount to reflect the disruption by the landlord to the tenants' move-out. Without further evidence of the costs, I provide an amount merely as an acknowledgement of a cost that the tenant was unable to prove~~***** (nominal).~~ **but that she nonetheless** incurred. I award the tenant an amount of \$70.00 in nominal damages for the delay in her move.

The tenant's son agreed to pick up the tenant's table. The landlord provided sworn testimony that he still holds the table in his possession. I order that, upon being contacted by the tenant's son, the landlord must provide two possible pick up dates and times and provide access to remove the table. I also order that the landlord ensure that the table is clean and undamaged. The tenant will not be receiving compensation for the

table because the table will be returned and the tenant provided no evidence with respect to its purchase, its condition or its age.

The tenant testified that, in the final month of her tenancy (February 2018), the landlord turned off her heat and hot water – this allegation is denied by the landlord and the tenant provided no supporting evidence that this occurred. The landlord alleged that the applications and this hearing would not have been necessary but for the actions of the tenant – the dispute resolution process is in place to address disagreements between landlords and tenants. I find that the landlord did not provide sufficient evidence to show that the tenant was solely responsible for the disagreements between parties. As stated above, I dismiss the allegations by both parties of ‘aggravation’ by the other party as ‘aggravation or irritation’ is not a ground to seek damages. Both parties made reference to the ‘aggravation’ as loss of quiet enjoyment to the other party: I find that there is insufficient evidence to support claims by either party.

Conclusion:

The application by the landlord for an Order of Possession was withdrawn.
The application by the tenant to cancel a Notice to End Tenancy was withdrawn.

As the tenant has vacated the rental unit, any orders with respect to the landlord’s access to the unit, repairs or services to provide to the tenant are moot and dismissed.

The landlord’s application for amend the amount of the landlord’s monetary claim to include damage to the rental unit at the end of tenancy is dismissed with leave to reapply.

I order the landlord to allow the tenant to attend and pick up the garden table from the rental unit premises as provided above)

The landlord is entitled to a monetary order as follows,

Item	Amount
Unpaid Rent – January 2018 (\$70.00) & February 2018 (\$1200.00)	\$1270.00
Less Nominal Amount re: Moving Cost	-70.00
Less Security Deposit	-1200.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$100.00

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 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*.

DECISION/ORDER AMENDED PURSUANT
TO SECTION 78(1)(A) OF THE RESIDENTIAL
TENANCY ACT ON May 25, 2018 AT THE
PLACES INDICATED.

Residential Tenancy Branch

Dated: May 04, 2018

Residential Tenancy Branch

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