



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MND MNR

Introduction

This hearing was convened in response to applications by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*.

Both parties attended the hearing, with the tenants being represented by their agent, D.A. (the “tenant”). Both parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord’s application for dispute resolution, while both parties confirmed receipt of each other’s evidentiary packages. I find that all parties were duly served in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Background and Evidence

The landlord explained that this tenancy began on July 31, 2012 when the landlord purchased the property. The tenants were already in occupation of the home and the landlord assumed them as tenants from the previous property owner. Rent was \$1,154.00 at the conclusion of the tenancy. The landlord said that he was seeking a monetary award of \$2,656.42 as follows:

ITEM	AMOUNT
Garbage Removal (labour)	\$500.00
Disposal of Garbage	556.17
Eviction Services	486.00
NSF bank charges	125.00
Unpaid Rent	989.25
TOTAL =	\$2,656.42

The landlord argued that the tenants had not vacated the rental unit until April 25, 2017 and he noted that they had left a large amount of debris in and around the rental unit. The landlord said he was seeking compensation for the time that the tenants were in occupation of the rental home, the fees related to the removal of the garbage, and the costs he had incurred related to eviction services, along with returned cheques from the bank. When asked to expand on the issues related to eviction services, the landlord said that the tenants had ceased to communicate with him, and that he required a 3rd party to serve documents on his behalf. The landlord's evidentiary package noted that the cheques for which he was charged bank fees arose from incidents which occurred in July 2013, November 2013 & 2014, December 2014, January 2017 and February 2017.

The tenants' agent disputed the version of events presented by the landlord at the hearing. She acknowledged that some garbage and debris was leftover following the tenants' departure from the home, but noted that it was all removed by April 4, 2017. It was explained that the garbage which was disposed of by the landlord was in fact construction debris related to the renovations which were being undertaken by the landlord immediately following the tenants' departure. The tenant argued the leftover garbage had nothing to do with them and related strictly to the construction. Furthermore, the tenant said that the tenants had in fact vacated the property on April 2, 2017, not April 25, 2017 as alleged by the landlord.

A copy of the condition inspection report completed by tenant B.R. and the landlord's agent notes that the tenants agreed to "haul garbage by April 4 6pm", that no move-in inspection was completed and 4 keys were returned. The condition inspection report is dated as having been completed on April 2, 2017.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, 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 onus is on the landlord to prove his entitlement to a claim for a monetary award.

After reviewing the evidence submitted at the hearing and considering the oral testimony of both parties, I find that that the landlord has failed to demonstrate that he should be entitled to any monetary award related to the garbage.

I find the information presented by the tenant related to the debris left in the home to be very compelling and note that no condition inspection report was completed by the parties at the start of the tenancy, making it impossible to determine what the state of the property was when the tenants took possession of the home. The tenant argued that debris was already present on the property that the items which were removed related to construction debris. As evidence of this, the tenant highlighted several toilets pictured in the evidence. I find this explanation to be very plausible and I decline to award the landlord a monetary order related to the labour and disposal of garbage.

The remainder landlord's application concerns an allegation of the tenants overholding in the rental unit for the majority of April 2017, a refund for eviction services and bank fees. I find that the use of an eviction service was completely unnecessary and that the landlord has no recourse under the *Act* for a return of the funds associated with this portion of his application. Section 88 & 89 of the *Act* provide a comprehensive list of ways in which a landlord can serve evidence to a tenant. These methods do not require the participation of the tenant, and the fact that the tenants had ceased to communicate with the landlord in no way would have prejudiced the landlord from applying for dispute resolution or serving them with documents. I find that the use of an eviction service is an unnecessary cost which must be borne by the landlord.

Section 57 of the *Act* describes an “overholding tenant” as a tenant who continues to occupy a rental unit after the tenancy is ended. In this case, the landlord argued that the tenancy ended on April 1, 2017 but that the tenants remained in the home until April 25, 2017. I find this allegation difficult to reconcile based on the fact that the condition inspection report signed by the landlord’s agent and the tenant notes that 4 keys were returned to the landlord’s agent on April 2, 2017. I find little evidence was presented which supports the landlord’s notion that the tenants overheld in the rental unit until April 25, 2017 and for the reasons cited above, dismiss this portion of the landlord’s application.

The final aspect of the landlord’s application which must be considered relates to banking fees for cheques which were returned. The tenant acknowledged that these fees were incurred but argued that many were “two or three years old” and argued that they should have been dealt with at the time they occurred. A review of the evidence demonstrated that the bank fees arose from payment issues from July 2013, November 2013 & 2014, December 2014, January 2017 and February 2017. I find that the landlord is estopped from collecting the outstanding bank fees from July 2013, November 2013 & 2014, and December 2014; however, he may collect the more recent fees from January and February 2017. Estoppel is the legal doctrine famously highlighted in the *Central London Property Trust Ltd v. High Trees House Ltd* [1947] KB 130 (or the *High Trees* case) where Lord Denning explained that, “A promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made and which was in fact acted on.” In this case, the landlord incurred the charges in 2013 and 2014 yet made no effort to collect the outstanding funds and there continued the tenancy despite having these costs levied against him. While there was no explicit promise made by the landlord, I find that his actions in not enforcing the earlier bank fees at the time they occurred amounts to estoppel and therefore prevent him from collecting the bank fees from 2013 & 2014, but do not prevent him from collecting the more recent fees **of \$100.00 for January and February 2017.**

Conclusion

I issue a Monetary Order of ~~\$50.00~~ **\$100.00** in favour of the landlord.

The landlords are provided with a Monetary Order in the above terms and 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: May 14, 2018

Residential Tenancy Branch

DECISION AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON JUNE 4, 2018
AT THE PLACES INDICATED ON PAGE 4.

Residential Tenancy Branch