



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR OLC ERP LRE RR PSF

Introduction

Both parties made applications. However, the tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:20 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:00 a.m. on June 7, 2018. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord stated the 10 Day Notice to End Tenancy dated March 22, 2018 to be effective April 5, 2018, was served March 23, 2018 by posting it on the door and they served their Application dated April 5, 2018 by registered mail and the tenant signed for its receipt. The tenant filed their Application on March 23, 2018 to Dispute the Notice but the landlord said they never received it from the tenant.

I find the landlord served their documents legally pursuant to sections 88 and 89 of the Act for the purposes of this hearing. I find insufficient evidence that the tenant served their Application. Pursuant to the principles of natural justice, the tenant's application will not be considered as part of this hearing as I find the landlord has had no notice of the tenants' claims against them.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is unpaid rent so sufficient cause to end the tenancy or is the tenant entitled to any relief? Has the landlord proved on the balance of probabilities that the tenant damaged the unit and the cost of repair? Are they entitled to recover the filing fee for their application?

Background and Evidence

Only the landlord attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in January 2014, it is now a month to month tenancy, rent is \$3150 a month and no security deposit was paid. The tenant had rented the whole house but sublet the basement and collected the rent. There is no signed Residential Tenancy Agreement. The landlord said the tenant vacated on May 1, 2018 so an Order of Possession is not required. The landlord claims the following rent is owed:

- \$1000 for March (the 10 Day Notice was served based on this) but it was not paid
- \$3150 for April less \$900 which the lower tenant paid.

The landlord claims damages as follows:

- \$600 for rug damage- to clean or fix the stains. It was new at the beginning of the tenancy so 4 years old when the tenant left. No quote provided.
- \$250 to replace a broken door. It was also 4 years old at the end of the tenancy. The landlord said they asked the price at the store to replace it.
- \$1500 to replace stairs in the garage which the tenant sawed in half to give more ease for him to park his car. The landlord said they asked a professional for an estimate. No quotes on costs are in evidence.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

I dismiss the application of the tenant in its entirety. I find they did not serve the landlord with their application nor attend the hearing to support it. I also find they did not provide documentary evidence to adequately support their application.

In respect to the landlord's application, I find the weight of the evidence is that the tenant vacated the unit on May 1, 2018 and left rent owing of \$1000 for March and \$3150 for April. However, I find the tenant's sublet paid \$900 for April so offset the amount owing to the landlord. I find the landlord entitled to a monetary order for \$3250 in unpaid rent (1000 + 2250).

Regarding the landlord's damage claim, I find awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Although there is no condition inspection report in evidence, I find the landlord's evidence credible that the unit was brand new at move-in and the tenant damaged the unit. The photographs in evidence support the landlord's credibility. I find the tenant violated section 32 (2) and (3) of the *Act* by damaging the unit and not repairing it. Therefore, I find the landlord entitled to compensation.

However, I find insufficient evidence to determine the cost of any losses suffered by the landlord since no professional estimates or other documents were provided to support the claim for damages. I find the landlord's evidence credible that they obtained a price of \$250 to replace the broken 3 year old door and \$1500 to replace the stairs that the tenant cut in half. The Residential Tenancy Policy Guideline 40 assigns a useful life to items in rented premises which is designed to account for reasonable wear and tear for which the tenant is not responsible. Doors and wooden stairs are assigned a useful life of 20 years; as the door and stairs were 3 years old at move-out, I find the landlord entitled to recover 85% of their replacement cost or \$1487.50 ($1750 \times 85\%$). In respect to the rug cleaning, I find insufficient evidence of cost; the photographs show it did need cleaning so I award the nominal sum of \$100 for this.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply and find them not entitled to recover their filing fee.

I find the landlord no longer needs an Order of Possession. For the reasons above, I find the landlord entitled to a monetary order as calculated below and to recover their filing fee:

Rent arrears and over holding rent	3250.00
Allowed cost to replace door & stairs	1487.50
Nominal cost to clean rug	100.00
Filing fee	100.00
Total Monetary Order to Landlord	4937.50

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: June 07, 2018

Residential Tenancy Branch