



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "first hearing" on February 1, 2018 lasted approximately 71 minutes and the "second hearing" on June 28, 2018 lasted approximately 55 minutes.

"Tenant LP" did not attend both hearings. The landlord, the landlord's agent, and tenant CB ("tenant") attended both hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At both hearings, the tenant confirmed that he had permission to speak on behalf of tenant LP, his wife, as an agent (collectively "tenants"). At the first hearing, the landlord's agent testified and confirmed that she had permission to speak on behalf of the landlord; she did not testify at the second hearing. The landlord did not testify at the first hearing but testified at the second hearing.

The landlord intended to call a witness at the second hearing but I did not find the evidence of that witness to be relevant or required, so the witness did not testify.

During the second hearing, the parties confirmed that the tenants had moved out of the rental unit prior to the first hearing. Accordingly, the landlord's application for an order of possession is dismissed without leave to reapply.

Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on February 1, 2018 was adjourned because the tenants were not properly served with the landlord's application and written evidence package, such that they did not have proper notice of the landlord's claims in order to appropriately respond to them.

At the first hearing, I provided specific instructions to both parties to serve and re-serve evidence in accordance with specific deadlines. I issued an interim decision, dated February 1, 2018, adjourning the first hearing and outlining these specific instructions.

At the second hearing, the tenant confirmed receipt of a portion of the landlord's written evidence package, with the exception of some emails, but not the landlord's full application for dispute resolution. He claimed that he received the landlord's monetary order worksheet and was aware of the landlord's claims against the tenants. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's application package and I proceeded with the hearing on this basis.

I notified both parties that I could not consider the landlord's entire written evidence package because the tenants did not receive some of the emails. The landlord said that he thought that the tenants were served with his complete written evidence package but the tenant produced the email for service and it did not contain all of the emails. I find that the landlord had ample time to serve the evidence, which was the reason why the hearing was adjourned in the first place, and the service was not confirmed properly by the landlord, which I find may be prejudicial to the tenants.

At the second hearing, the landlord confirmed receipt of the tenants' written evidence package. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was duly served with the tenants' written evidence package.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 15, 2017 and was for a fixed term to end on August 31, 2017. Both parties signed a written tenancy agreement. Monthly rent in the amount of \$1,800.00 was payable on the first day of each month. A security deposit of \$900.00 was paid by the tenants and the landlord continues to retain this deposit. A move-in condition inspection report was completed but a move-out condition inspection report was not completed for this tenancy. The tenants did not provide a forwarding address in writing to the landlord. The landlord did not have written permission to keep the tenants' deposit and filed his application to retain it on July 26, 2017.

The landlord seeks a monetary order of \$3,600.00 for July and August 2017 rent, \$400.00 for cleaning the rental unit and the \$100.00 application filing fee.

The landlord said that the tenants vacated the rental unit on July 19, 2017 when he checked the unit and found the keys inside. He stated that the tenants did not give notice that they were leaving, their July 2017 rent cheque came back returned for insufficient funds, and he posted a notice to end their tenancy for the unpaid rent. The landlord claimed that he posted an advertisement to re-rent the unit on July 20, 2017 but did not provide a copy of it for this hearing. He said that he posted photographs online, he had twelve showings of the unit, and re-rented the unit as of September 1, 2017.

The tenant agreed that the tenants did not pay the landlord for July and August 2017 rent. He said that he cancelled the tenants' post-dated rent cheques. He claimed that

the tenants vacated the rental unit by July 3, 2017, and left the rental unit keys and the landlord's furnishings that were required to be left behind. He said that he notified the landlord by way of text message on June 30, 2017, that he would be vacating the unit. He stated that the tenants received an eviction notice to leave by July 18, 2017. He said that the tenants left because there were a number of problems and repair issues with the rental unit, which he outlined to the landlord's agent in a letter on June 6, 2017, which he said the landlord's agent responded to on June 30, 2017. He said that there was a low vacancy rate in August 2017 in the area so the landlord should not have had a problem renting the unit to other tenants.

Analysis

Rental Loss

I find that the landlord and tenants entered into a fixed term tenancy for the period from May 15, 2017 until August 31, 2017.

Subsection 45(2) of the Act sets out how tenants may end a fixed term tenancy:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlord. In this case, the tenants ended the tenancy on July 18, 2017, prior to the end of the fixed term on August 31, 2017. I find that the tenants did not properly inform the landlord as to when they were vacating the rental unit and where they were leaving the keys for the landlord. I find that the tenants vacated on July 18, 2017 because the tenant's own text message on July 16, 2017, which he agreed he sent to the landlord, indicated that "to ensure we are completely out of the unit I'd like to do the walk thru on the eviction date of the 18th..." Although the tenant stated that the tenants were out of town during this time and they had already removed their belongings by then, I find that the tenant's own words indicate that the tenants had not fully vacated and wanted to ensure they could leave by July 18.

I find that the tenants breached the fixed term tenancy agreement. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I award the landlord \$1,800.00 in rental loss for July 2017. The tenants occupied the rental unit until July 18, 2017. Rent for July was due on July 1, 2017. The tenants failed to give proper notice to the landlord that they were leaving.

I dismiss the landlord's application for a loss of August 2017 rent of \$1,800.00. I find that the landlord failed to mitigate his losses in his efforts to re-rent the unit to prospective tenants. The landlord testified that he could not rent the unit for August 2017 because no one would want it since it was a "college town." The landlord failed to provide copies of any rental advertisements that he said he posted in order to prove how, when and on what terms he attempted to re-rent the unit. The landlord had more than ample time to provide this evidence prior to the first hearing.

Other Losses

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlord's claim of \$400.00 for cleaning the rental unit after the tenants moved out. The landlord said that he did not have any invoices or receipts because he

personally cleaned for 20 hours at a rate of \$20.00 per hour, based on market rates. He did not provide documentary proof of the market rate. He did not provide a move-out condition inspection report or photographs of the unit to show the condition of the unit when the tenants vacated. I find that he did not provide sufficient documentary evidence to prove his claim.

As the landlord was mainly unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$900.00. During the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' entire security deposit of \$900.00 in partial satisfaction of the monetary award.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$900.00 against the tenant(s). 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.

The landlord's application for an order of possession, a monetary order for damage to the rental unit and to recover the \$100.00 application filing fee, is dismissed without leave to reapply.

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 29, 2018

Residential Tenancy Branch