



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCL-S, MNDL-S – OPC, FFL

Introduction

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. An Order for Possession for cause
- b. A Monetary Order in the sum of \$1750 for damages and loss of revenue
- c. An Order to retain the security deposit.
- d. An Order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant on May 18, 2018 by posting. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was personally served on the Tenants on June 23, 2018. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on August 1, 2017. The rent is \$1050 per month payable in advance on the first day of each month.

In the middle of May the tenant's washing machine overflowed causing damage to the rental unit and the unit below. The landlord paid a contractor \$200 to make repairs to the unit below. The landlord estimates it will cost \$1232 to repair the Tenants unit although the work has not started as the tenants continue to reside in the rental unit.

The one month Notice to End Tenancy was served on the Tenants by posting around on May 18, 2018. The tenants have not filed a Application for Dispute Resolution to dispute the Notice.

The Notice to End Tenancy sets out the following grounds:

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
 - ...
put the landlord's property at significant risk

The Details of Cause(s) section is blank. There is a notation on the form that states "The RTB may cancel the notice if details are not described."

Analysis - Order of Possession:

The Tenants failed to apply to cancel the Notice to End Tenancy and the time to do so has expired. The Act provides they are conclusively deemed to have accepted the end of the tenancy and they must vacate the rental unit. As the end of tenancy date has passed an arbitrator does not have the jurisdiction to extend the time for the tenant's to make an Application.

However, a fundamental principle of our legal system is that the respondents must have notice of the claim that is being made against them. Both respondents do not speak English. The Details section does not identify the evidentiary basis for the landlord taking steps to end the tenancy. I determined to grant an Order of Possession in the circumstances such as this would result in a denial of the principles of natural justice. It would have been very easy for the landlord to include the reason for the Notice in the Details section. As a result I order that the Notice to End Tenancy dated May 17, 2018 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Analysis - Monetary Order and Cost of Filing fee

I am satisfied based on the evidence presented that the tenants are responsible for the damage caused by the leaking washing machine. The landlord has paid \$200 for fix the downstairs unit. The landlord is entitled to recover this from the Tenants. The landlord provided estimates of costs to repair the Tenant's unit amounting to \$1232. The total monetary order sought by the landlord is \$700. In the circumstances while the landlord has not yet incurred the cost to repair the tenant's unit I determined the total amount claimed I reasonable. As a result I granted the landlord a monetary order in the sum of \$700 plus the sum of \$100 in respect of the filing fee for a total of \$800 in full satisfaction of the claim for water damage to both units. I dismissed the landlord's claim for lost revenue as the landlord failed to prove this claim. .

Security Deposit

As the tenancy is ongoing I dismissed the claim to keep the security deposit.

Conclusion:

I dismissed the application for an Order of Possession as I determined the one month Notice to End Tenancy failed to give the Tenants sufficient notice of the claim being made against them. I ordered that the Tenants pay to the landlord the sum of \$800 in full satisfaction of the claims for water damage.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the 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: August 16, 2018

Residential Tenancy Branch