



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNRL-S, MNDL-S, FFL

Introduction

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

- an order of possession based on a written mutual agreement to end tenancy pursuant to section 55;
- a monetary order for unpaid rent and damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 15 minutes. The landlords (collectively the "landlord") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with a copy of the application and the hearing package on September 14, 2018 by Xpress post to the rental unit. The landlord provided the Canada Post tracking number into oral evidence to verify this method of service; this number is detailed on the front page of this Decision. The Canada Post website shows that the documents were received and signed for on October 4, 2018. Therefore, based on the undisputed evidence before me, I find the tenant was served pursuant to Section 89(1) (c) of the *Act*.

Preliminary Issue – Amendment of Landlords' Application

The landlords confirmed that they wished to amend the landlords' application to increase their monetary claim to include October 2018 unpaid rent in the amount of \$400.00. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if he did not pay the rent or vacate the rental unit to permit the landlord to re-rent the unit. Based on this undisputed evidence and in accordance with

section 64(3)(c) of the Act, I amend the landlords' application to include a monetary claim for October 2018 unpaid rent in the amount of \$400.00.

Issue(s) to be Decided

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for unpaid rent and damage to the unit?

Are the landlords authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Are the landlords authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on February 1, 2017 on a month-to-month basis. Rent in the amount of \$700.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$350.00 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

On July 20, 2018 a Mutual Agreement to End Tenancy form was signed by the landlord and tenant. This form indicates the tenant agreed to vacate the rental unit by July 15, 2018. The landlord testified that this effective date of July was a clerical error on their part; the parties had agreed the tenancy would end August 15, 2018. The landlord provided a copy of the signed form.

The landlords seek a monetary order of \$2,500.00 for unpaid rent from July 2018 to October 2018. The landlords claimed that the tenant paid a total of \$300.00 in rent for the above four months.

The landlord testified that in January 2018 the tenant's guest damaged the unit windows to the extent repairs had to be made. The landlords had the windows repaired on January 23, 2018 at the cost of \$812.98. The landlords testified that because they had a verbal agreement to only charge the tenant 50% of the repair cost, they seek \$406.00 in damages.

The landlords are also seeking to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Section 44 of the *Act* establishes that a tenancy may end if the landlord and tenant agree in writing to end the tenancy.

Based on the undisputed testimony of the landlord and on the basis that the form was signed prior to the effective date, I find the July 15, 2018 effective date was a clerical error, and should read August 15, 2018. Therefore I am satisfied that the tenant and landlord agreed in writing that the tenancy would end on or before August 15, 2018. The landlord was entitled to possession of the rental unit on that date. As that has not occurred, the landlord is entitled to a two-day order of possession for the rental unit.

Section 26 of the *Act* requires tenants to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlords proved that the current rent for this unit is \$700.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from July 2018 to October 2018. Therefore, I find that the landlords are entitled to \$2,500.00 in rent.

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Based on the undisputed testimony of the landlord, the text message from the neighbour and the invoice before me, I am satisfied the landlords met the above test and award them \$406.00 in damages, as claimed.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee for a total award of \$3,006.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the security deposit in the total amount of \$350.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$2,656.00.

Conclusion

I grant an order of possession to the landlords effective **two (2) days after service on the tenant.**

I issue a monetary order in the landlords' favour in the amount of \$2,656.00 for the following items:

Item	Amount
July Rent	\$700.00
August Rent	\$700.00
September Rent	\$700.00
October Rent	\$400.00
Window Repair	\$406.00
Filing fee	\$100.00
Security deposit	(\$350.00)
Total Monetary Order	\$2,656.00

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: October 25, 2018

Residential Tenancy Branch