



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR-S, MNDC-S, FFL

Introduction

This hearing was convened in response to an application by the landlord made February 19, 2018 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A Monetary Order for unpaid rent and utilities - Section 67;
2. A Monetary Order for damage and loss ("aggravated damages") - Section 67
3. To recover the filing fee for this application – Section 72

I accept the landlord's undisputed testimony that despite the tenant having been served with the application for dispute resolution and notice of hearing for this matter by *registered mail* sent in February 2018 to the forwarding address provided by the tenant, in accordance with Section 89 of the Act, the tenant did not call into the conference call hearing nor otherwise participated in this proceeding. The landlord acknowledged providing the tenant with all of the evidence provided to this hearing, also by registered mail.

The landlord was given full opportunity to be heard, to present evidence, make submissions, and the hearing proceeded on the merits of the landlord's application. Prior to concluding the hearing the landlord acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary matters

At the outset of the hearing the landlord clarified their claim seeking unpaid rent for February 2018 in the amount of \$780.00, unpaid utilities under the tenancy agreement of \$40.27, an unspecified amount for damage and loss (aggravated damages) and to recover their filing fee of \$100.00.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts, as claimed?

Background and Evidence

The relevant undisputed evidence in this matter is as follows. The tenancy began on April 01, 2016 and has since ended. Rent in the amount of \$780.00 was payable in advance on the first day of each month. At the outset of the tenancy the landlord collected a security deposit and a pet damage deposit from the tenant in the sum of \$750.00 which they retain in trust. In November 2017 the landlord gave the tenant a Notice to End for Cause which the tenant disputed and was consequently given a hearing date of February 16, 2018. Regardless of which the landlord provided a witness narrative stating that while the landlord was absent the tenant was seen vacating the rental unit prior to the hearing and without notice to the landlord on or about February 07, 2018. The landlord testified the tenant failed to pay rent for the month in which they vacated.

I have benefit of a copy of the tenancy agreement which stipulates that the tenant was responsible for one third of the Hydro Utility bill every 2 months. The landlord provided evidence that the tenant owed a portion of the Hydro utility to the date they vacated in the amount of \$40.27.

The landlord testified they had a disputatious relationship with the tenant and that the tenant made passing negative references to the tenancy relationship on their Facebook page and in one post named the landlord. The landlord also submitted a photo image which the landlord claims depicts the tenant once writing a demeaning slur on the inside of the rental unit's fogged window, which the landlord claims they viewed as "fat bitch". The landlord provided a photo image of the window from which any purported words are not discernible. The landlord further provided a 3-word Google review of the business entity with which the landlord is associated. The review is purportedly posted by the tenant as it contains their name as the reviewer. The wording of the review solely states, "*questionable ethical practices*"- as written, and the landlord testified it was clearly aimed at the business entity. The landlord testified that the tenant has never had any business or other dealings with the business entity. The landlord testified that their family and friends have been directed to view the online posts which they consider are an affront to their character. The landlord testified that Google has been informed to remove the review posting related to the business entity.

The landlord testified they seek *aggravated damages* in respect to the above conduct of the tenant in “the maximum possible amount that can be awarded for aggravated damages” pursuant to, “Residential Tenancy Branch precedents” in such matters.

Analysis

Based on the landlord’s undisputed evidence I find that the tenant provided the landlord with legal notice of a hearing convened to address the tenant’s own application to cancel the landlord’s Notice to End and for the tenancy to continue; but instead the tenant determined to vacate before the hearing date in the first week of February 2018 without prior notice to the landlord and without satisfying the rent for that month. As a result I find that the landlord is owed the payable rent for February 2018 in the amount of **\$780.00**. Additionally, I find the landlord has provided evidence that the tenant owes for the Hydro utility as part of the tenancy agreement and evidence of utility usage for the period to February 07, 2018 in the amount of **\$40.27**.

In this matter the landlord has sought *aggravated damages* for conduct by the tenant of a nature they allege as slanderous, libellous and criminal. It must be noted that the definition for *slander* is *spoken statements damaging or injuring one’s reputation*; and that, *libel* is *written statements damaging or injuring one’s reputation*. One may be taken to task for either or both and such behaviour may also be found by a competent court to be criminal. It must also be noted I am not bound by previous arbitration decisions as I must determine this matter on its own merits.

Residential Tenancy Policy Guideline 16 speaks to the subject of Aggravated Damages as follows;

- “Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

Therefore, aggravated damages are damages awarded to compensate and take into account intangible injury or loss in addition to normally assessed pecuniary or monetary damages. They are an award of compensation for *non-monetary* losses.

In the majority of matters, under the Act for one’s conduct to attract compensation it must be established that the conduct has resulted in some damage or loss. As a simple example, pursuant to the Act if a tenant’s conduct results in a broken door of the rental

property the measure for compensation to a landlord would be the monetary value for the repair or replacement of the door. In the case of contentious spoken or written statements, or in this matter internet posts as presented by the landlord, the measure for compensation would be the intangible damage or injury to the wronged person resulting from the internet posts. I find that in these types of cases an award of “aggravated damages” may be appropriate where there is sufficient evidence of the resulting damage or loss to an individual.

In respect to the landlord’s call for imposing a consequence on the tenant for their internet posts it must be known that I cannot award *punitive damages*. I do not have the authority to punish the tenant. On preponderance of the evidence in this matter I find that the landlord has not advanced sufficient evidence of how the tenant’s internet posts have significantly influenced their life or how as a result of the tenant’s conduct they have suffered a loss or incurred damage or injury so as to warrant an award of *aggravated damages*. Therefore the landlord’s claim for *aggravated damages* is **dismissed**, without leave to reapply.

As the landlord has in part been successful in this application they are entitled to recover their filing fee. The deposits of the tenancy will be off-set from the award made herein.

Calculation for Monetary Order

Unpaid rent for February 2018	\$780.00
Unpaid utility - Hydro	\$40.27
Landlord’s Filing fee	\$100.00
<i>Less security and pet damage deposits held in trust.</i>	<i>-\$750.00</i>
Monetary Order - landlord	\$170.27

Conclusion

The landlord’s application in part is granted.

I Order that the landlord may retain the deposits of the tenancy totalling \$750.00 in partial satisfaction of the claim and I grant the landlord a Monetary Order under Section 67 of the Act for the balance due of **\$170.27**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: September 19, 2018

Residential Tenancy Branch