



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction:

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. on September 20, 2018. The landlord and a witness attended the hearing and gave sworn or affirmed testimony. The landlord 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.

Rules 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure provides as follows:

Commencement of the Hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord provided evidence that they had served the tenant with the Application for Dispute Resolution and the Amendment personally with a witness who also testified I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 44 (1) (c) and 55 as the tenant has breached a term of the Mutual Agreement to End Tenancy by not vacating as agreed;
- b) A monetary order for over holding rent and bailiff costs;
- c) To retain the security deposit to offset the amount owing; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

The landlord obtained an Order of Possession in a previous hearing. Is the landlord now entitled to a Monetary Order for over holding rent and filing fee?

Background and Evidence:

The undisputed evidence is that the tenant commenced living in the premises April 1, 2018, a security deposit of \$600 was paid and rent is currently \$1200 a month. The landlord provided evidence that despite a Mutual Agreement to End Tenancy effective August 1, 2018 and an Order of Possession obtained in a previous hearing, the tenant refused to move out. The health of the new baby of the landlord was severely affected by the second hand smoke from the tenants according to medical records. The landlord had to get a Writ of Possession from the Supreme Court and hire bailiff services to remove the tenant at a cost of \$1700.

The landlord requests compensation as follows:

\$900 for rent arrears for July

\$1200 over-holding rent for August

\$1200 over-holding rent for September (reduced to \$600 as the tenant was removed on September 13, 2018.

\$1700 for bailiff costs.

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

Analysis

Monetary Order

Section 26 of the Act provides a tenant must pay rent when due. Sections 7 and 67 provide that if a party violates the Act or tenancy agreement and causes loss to the other party, that other party is entitled to be compensated. I find the tenant breached the Act and tenancy agreement by not paying rent and also breached the Act by not obeying the Order of Possession which caused further loss to the landlord. Therefore I find the landlord is entitled to compensation for rental arrears and overholding rent in the amount of \$2700 from July to September 13, 2018 and is also entitled to be compensated for his cost of the bailiff to remove the tenant.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application.

Rent arrears July 2018	900.00
Over-holding rent August-Sept. 13	1800.00
Bailiff Cost	1700.00
Filing fee	100.00
Less security deposit	-600.00
Total Monetary Order to Landlord	3900.00

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: September 20, 2018

Residential Tenancy Branch