



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: FFL, MNDL, MNRL

introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$1885 for loss of rent and damages
- b. 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 Application for Dispute Resolution and Notice of Dispute Resolution Hearing was sufficiently served on the Respondent.

The Respondent stated he is the Executor and Trustee of the Estate of the Tenant. I ordered that the Application for Dispute Resolution be amended to indicate he is the personal representative of the Estate of the Tenant. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The landlord and the Tenant entered into an oral tenancy agreement that provided that the tenancy would start on May 31, 2009. The tenant advised the landlord that she

was not returning to the rental unit on April 16, 2016. A previous arbitration has determined the tenancy ended at the end of April 2016. The rent at the time the tenancy ended was \$725 per month payable in advance on the first day of each month.

In February 2016 the landlord received notice from the City that the rental unit was non-conforming and that renovations were necessary to bring the rental unit up to Code. The tenant spent some of her time in March living at the cottage of a friend and some of the time living in the rental unit. On April 1, 2016 the tenant moved to the cottage of a friend while the renovation work proceeded. I determined that the rent for the rental unit was paid for March and April 2016.

The Tenant advised the landlord on April 16, 2016 that she did not intend to move back into the rental unit.

It is unclear when the renovation work was completed. At one stage the landlord testified the renovations were not completed until August 2016. However, she later changed this testimony and testified new tenants moved into the rental unit at the end of July. The landlord failed to provide evidence from the City as to when the rental unit passed inspection and she was authorized to re-rent it.

The tenant paid the rent for the months of March and April 2016. The landlord paid the tenant \$400 to be given as rent for the cottage. The receipt is dated May 17, 2016 and states that the \$400 was for rent at cottage – March/16.

The tenant passed away on August 7, 2017.

The landlord testified the tenant was given the option of moving to another suite in the rental property but refused to do so.

The landlord produced a quotation from a painter charging the landlord \$1200 for painting and a further \$750 for fire and smoke damage caused by the tenant's extensive use of candles which required a special coat of paint.

Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person

permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I dismissed the landlord's claim of \$750 for loss of rent for May 2016. While the tenant failed to give the landlord the required one month notice the landlord failed to prove that it was possible to rent the rental unit for May 2016 as the landlord failed to provide evidence that the City had completed the final inspection and it was legally possible to rent the rental unit. Further, the landlord failed to provide evidence that she sufficiently attempted to mitigate her loss by advertising in a timely manner.
- b. I dismissed the landlord's claim of \$400 for reimbursement of the rent used for the cottage. The landlord failed to prove she is entitled to this sum as it would appear from the receipt given by the landlord that the sum of given to the Tenant for her rental of the cottage in March when the rental unit was being renovated.
- c. The landlord claimed \$750 for the additional cost to repaint the rental unit because of the smoke damage from candles. After considering all of the evidence including reasonable wear and tear I determined the landlord is entitled to \$375 of this claim.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$375 plus the \$100 filing fee for a total of \$475.

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 final and binding on the parties.

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 06, 2018

Residential Tenancy Branch