



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent and damage to the unit or property 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 landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant had an advocate to assist with oral evidence submissions.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant testified that they were not served with the Notice of this Hearing and that they had to contact the Residential Tenancy Branch for the details to the hearing. The tenant stated that they did submit evidence and that they were prepared to go forward with the hearing. Although the tenant was not served in accordance with section 89 (1) of the *Act*, I find the tenant is duly served with the Application for Dispute Resolution (the Application) pursuant to section 71 (c) of the *Act*, which allows an Arbitrator to find a document sufficiently served for the purposes of the *Act*.

The tenant confirmed receipt of the landlord's evidence and I find that they are duly served with it.

The tenant testified that they sent their evidence to the landlord by registered mail. The landlord stated that they had not received the tenant's evidence; however, I find that the

tenant provided a Canada Post tracking number which shows that a notice card was left in the landlord's mailbox and that the tenant had done taken this action as soon as they were aware that a hearing was taking place despite not being served with a notice of hearing from the landlord. I find that the landlord not picking up their registered mail is not the responsibility of the tenant and that deemed service pursuant to section 88 of the Act is not dependent on the landlord picking up their mail. For the above reasons, I will consider the tenant's evidence.

Preliminary Matters

At the outset of the hearing the landlord and the tenant confirmed that the tenant was no longer in the rental unit. The landlord and the tenant also confirmed that there is a previous decision in which the matter of the security deposit and the unpaid rent were conclusively settled.

For the above reasons, I dismiss the Application for an Order of Possession without leave to reapply. As the matter of unpaid rent and the security deposit have been already decided, I decline jurisdiction as they cannot be decided again.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord provided in evidence lists of damage in the rental unit, multiple estimates for work to be completed and various pictures taken from within and outside the rental unit.

The tenant provided in evidence a description of events that occurred during and after the tenancy, photos taken when the tenant moved in and a copy of a text message exchange with the landlord in which the landlord acknowledges that they do not know the condition of the rental unit at the time the tenant is moving in. The landlord further states in the text message exchange that the landlord's and previous occupant's stuff in the yard may require a trip to the dump for the landlord to dispose of.

The landlord stated that there is at least \$6,000.00 worth of repairs and cleaning to be completed at the rental unit. The landlord confirmed that they did not submit a Monetary Order Worksheet which breaks down the landlord's monetary claim. The landlord confirmed that they did not complete a condition inspection report at the beginning or at

the end of the tenancy. The landlord confirmed that they did not submit any receipts to demonstrate a loss, only estimates for work to be completed. The landlord submitted that he could not afford to do the repairs until he receives money from the tenant. The landlord testified that there was excessive wear and tear in the house and he had assistance from family to perform multiple hours of cleaning.

The tenant stated that there was no condition inspection done at the beginning or at the end of the tenancy and that the landlord had various items in the yard of the rental unit during the tenancy in addition to the tenant's belongings. The tenant submitted that the landlord did not allow the tenant back into the rental unit to do any cleaning once the landlord had taken possession of the rental unit back. The tenant referred to the text message exchange in which the landlord stated they did not know the condition of the rental unit when the tenant moved in.

Analysis

Pursuant to 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. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the landlord bears the burden to prove that they incurred a loss and that this loss was due to the actions or neglect of the tenant in violation of the Act, Regulations or tenancy agreement. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I find that the landlord has not provided any documentary evidence to support their claim of cleaning the rental unit with their family members such as a witness statement or timesheet of hours or pictures that show the rental unit being cleaned. In addition to the above, I find that the landlord has not established a monetary loss as there were no receipts provided in evidence, only estimates for work to be completed. I find that

estimates for work to be completed do not demonstrate a loss as no money has actually been spent for the items being claimed.

Sections 23 and 35 of the Act state that at the beginning and the end of a tenancy a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report and both the landlord and the tenant must sign the condition report. Having reviewed the documentary evidence and affirmed testimony, I find that it is undisputed that there was no condition inspection report completed to establish the condition of the rental unit at the beginning or the end of the tenancy. I find that, without a condition inspection report, the landlord is not able to establish the condition of the unit which would enable them to prove that they incurred a loss due to the actions of the tenant.

For the above reasons I dismiss the landlord's Application for a monetary award for damage to the rental unit, without leave to reapply.

As the landlord has not been successful in this application, I dismiss their request to recover the filing fee from the tenant.

Conclusion

The landlord's Application is dismissed in its entirety, without leave to reapply.

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: December 04, 2018

Residential Tenancy Branch