Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR, OPC, MNRL, FFL
For the tenant: CNR, OLC, FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution ("application") by both parties seeking remedy under the *Residential Tenancy Act* ("*Act*"). The landlord applied for an order of possession for unpaid rent or utilities and for cause, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), for an order directing the landlord to comply with the *Act,* regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord, the tenant and a witness for the tenant who did not testify, attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Both parties confirmed that they received and had the opportunity to review documentary evidence served upon them from the other party. I find there are no service issues as a result. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

During the hearing, the landlord requested permission to submit evidence after the hearing to support portions of her claim. The landlord's request was denied as I advised the parties that granting the landlord's request would be prejudicial to the respondent tenant and not in compliance with the RTB Rules, as the timelines to submit evidence to support both applications have passed.

In addition, the parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

As the parties confirmed the tenant vacated the rental unit on November 30, 2018, which was after the tenant filed their application, the parties were advised that I would not be considering the tenant's application as it was now moot; the tenancy ended based on the tenant's action of vacating the rental unit. Therefore, I dismiss the tenant's application without leave to reapply, as it is now moot. I find the tenancy ended on November 30, 2018, when the tenant vacated the rental unit. I also dismiss the landlord's application for an order of possession as the landlord confirmed that she already has possession back of the rental unit and that an order of possession is no longer necessary. Given the above, I will only consider the landlord's monetary claim before me.

The landlord was also cautioned throughout the hearing for interrupting the tenant and the arbitrator although a formal caution was given to the landlord to cease interrupting. The landlord was clearly unprepared for the hearing; however, the landlord was advised that being unprepared for the hearing is not the responsibility of the respondent tenant or the arbitrator.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act,* and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act?*

Background and Evidence

The landlord's monetary claim of $3,557.27 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED

1. Power washing (oil stain on driveway)	$219.45
2. Baseboards (bottom of bathroom wall)	$200.00
3. Nails on the wall	$50.00
4. Oven cleaning	$100.00
5. Garbage left behind by tenant in yard	$282.00
6. November rent	$1,664.00
7. Water bill	$142.82
8. Washing machine not working	$899.00
TOTAL	**$3,557.27**

Firstly, the tenant did not agree with any amount of the landlord's claim. It was very clear during the hearing that the parties have an acrimonious landlord and tenant relationship. While some photos were submitted in evidence, none of the photos were numbered or date stamped.

Regarding item 1, the landlord has claimed $219.45 for the cost of power washing the driveway that the landlord claims had oil stains from the tenant's leaking car. The landlord first testified that there was no incoming Condition Inspection Report ("CIR") and later changed her testimony that an incoming CIR was completed but was just not submitted in evidence in support of the landlord's claim. The landlord also failed to provide before photos to show that the driveway was not stained with oil at the start of the tenancy. The landlord stated that the reason the incoming CIR was not submitted in evidence was because her husband completed the CIR and that the landlord and her husband now have a restraining order between them and there is no contact permitted as part of that restraining order.

The tenant claims that there were stains on the driveway when she moved into the rental unit and that she was not the only one to park on that side of the driveway shown in the only driveway photo. The landlord changed her testimony during the hearing from first stating that the driveway was new at the start of the tenancy to later admitting that she was "pretty sure there were no oil stains" and that the rental unit and driveway were one year old as the unit was built in 2015 and the tenancy did not start until July 1, 2016. A copy of a receipt for the amount claimed was not submitted in evidence.

Regarding item 2, the landlord has claimed $200.00 to repair the baseboards in the bathroom. The landlord was asked how she arrived at the amount claimed and she stated that she called a handyman who quoted her that amount. The landlord has

provided no written estimates or other documents to support the amount claimed and as a result, and having confirmed that there was no incoming CIR submitted in evidence for my consideration, I find that this item fails to meet all parts of the test for damages or loss which I will described later in this decision.

Regarding item 3, the landlord has claimed $50.00 to repair nails on the wall of the rental unit. The landlord was asked how she arrived at the amount claimed and she stated that she called a handyman who quoted her that amount. The landlord has provided no written estimates or other documents to support the amount claimed and as a result, and having confirmed that there was no incoming CIR submitted in evidence for my consideration, I find that in keeping with my decision regarding item 2 above, that this item also fails to meet all parts of the test for damages or loss which I will described later in this decision.

Regarding item 4, the landlord has claimed $100.00 for the cost of oven cleaning. The landlord was asked how she arrived at the amount claimed and she stated that she called a local company who quoted her that amount. The landlord has provided no written estimates or other documents to support the amount claimed and as a result, and having confirmed that there was no incoming CIR submitted in evidence for my consideration, I find that in keeping with my decision regarding item 2 above, that this item also fails to meet all parts of the test for damages or loss which I will described later in this decision. The landlord did not state that she was charging for her time to clean the oven and that she was charging a certain amount for that time to clean the oven.

Regarding item 5, the landlord has claimed $282.00 to remove garbage left behind by the tenant in the yard; however, admitted that she “did not have time” to get a written quote from the junk removal company. As a result, the landlord admitted that she was relying on a telephone quote from a junk removal company for this portion of her claim. The landlord has provided no written estimates or other documents to support the amount claimed and as a result, and having confirmed that there was no incoming CIR submitted in evidence for my consideration, I find that in keeping with my decision regarding item 2 above, that this item also fails to meet all parts of the test for damages or loss which I will described later in this decision. The landlord did not state that she was charging for her time to remove any junk or garbage from the rental unit yard.
Regarding item 6, the landlord has claimed $1,664.00 for unpaid November 2018 rent; however, both parties confirmed that a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated September 29, 2018 (“2 Month Notice”) had been served on the tenant. The 2 Month Notice was submitted in evidence and includes an effective

vacancy date of December 1, 2018. The tenant testified that she vacated the rental unit on November 30, 2018 in accordance with the 2 Month Notice and that rent for November 2018, is not due as a result of the compensation due to the tenant when served with a 2 Month Notice. The landlord claims that the tenancy ended due to either the 10 Day Notice or the 1 Month Notice; however, the tenant disputes that suggestion by the landlord. The parties were advised during the hearing as the 10 Day Notice was for November 1, 2018, rent that the tenancy ended by way of the 2 Month Notice as once served, a 2 Month Notice cannot be unilaterally withdrawn by the landlord and that I find that the tenancy ended on by way of the undisputed 2 Month Notice. I will address this item further in this decision.

Regarding item 7, the landlord has claimed $142.82 for a water bill and referred to the tenancy agreement which states the water bill shall be “3:2”. The landlord testified that the tenant is responsible for 3/5 of the water bill; however, the tenancy agreement does not indicate that. The landlord was advised during the hearing that “3:2” is an unenforceable term of the tenancy agreement as that ratio does not state what portion of the water bill the tenant is responsible to pay. Therefore, the parties were advised that I would be finding that the tenant is responsible for 50% of the water bill and nothing more. In addition, in the future, the landlord is cautioned to ensure that all tenancy agreements indicate clearly what portion of all utilities are the responsibility of the tenant to ensure that the term is enforceable. The tenant confirmed that she has not paid any of the $213.74 water bill submitted in evidence which covers the usage period of August 11, 2018 to October 5, 2018 which the water bill states is 56 days.

Regarding item 8, the landlord has claimed $899.00 for the cost to replace the washing machine. The landlord claims that the washing machine is broken and does not work. The tenant stated that the locking mechanism on the washing machine has failed so that washing machine won’t turn on until that locking mechanism is replaced or repaired; however, that the washing machine still works other than the locking mechanism. The landlord stated that the washing machine is a 2015 model and there was no quote submitted in evidence for consideration of the amount claimed. There was also no appliance details as to the make and model of the washing machine submitted in evidence.

Analysis

Based on the documentary evidence and the testimony before me, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and their claim fails. In the matter before me, the landlord bears the burden of proof in providing sufficient evidence to support their claim.

Item 1 - The landlord has claimed $219.45 for the cost of power washing the driveway that the landlord claims had oil stains from the tenant's leaking car. As there was no invoice for $219.45 submitted for my consideration and without an incoming CIR, I find the landlord has provided insufficient evidence to support this portion of their claim. I find the landlord has failed to meet parts one, two and three of the test for damages or loss described above. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Item 2 - The landlord has claimed $200.00 to repair the baseboards in the bathroom. As described above, the landlord was asked how she arrived at the amount claimed and she stated that she called a handyman who quoted her that amount. Due to the landlord failing to provide a written estimate or other documents to support the amount claimed, and taking into account that I do not have an incoming CIR to consider, I find the landlord has failed to meet all parts of the test for damages or loss. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Item 3 – The landlord has claimed $50.00 to repair nails on the wall of the rental unit. As described above, the landlord was asked how she arrived at the amount claimed and she stated that she called a handyman who quoted her that amount. Due to the landlord failing to provide a written estimate or other documents to support the amount claimed,

and taking into account that I do not have an incoming CIR to consider, I find the landlord has failed to meet all parts of the test for damages or loss. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Item 4 - The landlord has claimed $100.00 for the cost of oven cleaning. As described above, the landlord was asked how she arrived at the amount claimed and she stated that she called a local company who quoted her that amount. Due to the landlord failing to provide a written estimate or other documents to support the amount claimed, and taking into account that I do not have an incoming CIR to consider, I find the landlord has failed to meet all parts of the test for damages or loss. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Item 5 - The landlord has claimed $282.00 to remove garbage left behind by the tenant in the yard; however, admitted that she "did not have time" to get a written quote from the junk removal company. Due to the landlord failing to provide a written estimate or other documents to support the amount claimed, and taking into account that the landlord did not state that she was charging a specific amount for her own time to remove garbage, I find the landlord has failed to meet all parts of the test for damages or loss. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Item 6 - The landlord has claimed $1,664.00 for unpaid November 2018 rent; however, both parties confirmed that a 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 29, 2018 ("2 Month Notice") had been served on the tenant. As the 2 Month Notice was submitted in evidence and includes an effective vacancy date of December 1, 2018, I find the tenancy ended based on the 2 Month Notice and not the 10 Day Notice or the 1 Month Notice. Once a 2 Month Notice has been served, the landlord cannot unilaterally withdraw the 2 Month Notice and I find the tenant had the right under section 49 of the *Act* to rely on that 2 Month Notice and the compensation of one month's rent that a 2 Month Notice includes, once served. Therefore, I find that the landlord has failed to meet parts one, two and three of the test for damages and loss for this item. I dismiss this item due to insufficient evidence, without leave to reapply.

Item 7 – The landlord has claimed $142.82 for a water bill and referred to the tenancy agreement which states the water bill shall be "3:2". As mentioned above, I find the "3:2" portion listed on the tenancy agreement for utilities is an unenforceable term of the tenancy agreement as that ratio does not state what portion of the water bill the tenant is responsible to pay. Therefore, I find the tenant's portion is 50%. As the usage period

covers a period between August 11, 2018 and October 5, 2018, which the water bill states is 56 days, I note that the tenant did not occupy the rental unit for October 1, 2018 to October 5, 2018, inclusive which is 5 days. Therefore, I have divided the total water bill of $213.74 by 56 days, which equals $3.82 per day. I then have subtracted the 5 days the tenant was not in the rental unit from 56 days which equals 51 days. I have multiplied 51 days by $3.82 per day which equals $194.82 and then divide that amount 50% which equals $97.41. Therefore, I find the since the tenancy agreement does not include water and the tenant's portion is 50% as noted above, I find the landlord has met the burden of proof in the amount of **$97.41** owing by the tenant for the unpaid water bill.

Item 8 - The landlord has claimed $899.00 for the cost to replace the washing machine. The landlord claims that the washing machine is broken and does not work. The tenant stated that the locking mechanism on the washing machine has failed so that washing machine won't turn on until that locking mechanism is replaced or repaired; however, that the washing machine still works other than the locking mechanism. The landlord stated that the washing machine is a 2015 model and there was no quote submitted in evidence for consideration of the amount claimed. There was also no appliance details as to the make and model of the washing machine submitted in evidence.

As the landlord has the burden of proof to support their claim, I find that based on the lack of an incoming CIR and no documents from an appliance repair company/technician, that the landlord has provided insufficient evidence to support that the tenant has purposely damaged the washing machine through neglect or other behaviour. When an appliance stops working or fails to lock when closed, a landlord is responsible under RTB Policy Guideline 1 to repair that appliance when included in the monthly rent. Therefore, I find it just as likely that the appliance is in need of repair and I am not satisfied that the tenant has purposely damaged or has broken the washing machine. I am also not satisfied that the amount claimed has been proven on the balance of probabilities. Therefore, I find the landlord has failed to meet parts one, two and three of the test for damages or loss. I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

As the landlord's application had some merit, I grant the landlord the recovery of their filing fee in the amount of **$100.00** in accordance with section 72 of the *Act.*

As the tenant's application was moot, I do not grant the tenant the recovery of the cost of the filing fee.

I find the landlord has established a total monetary claim in the amount of **$197.41** comprised of $97.41 for item 7, plus the filing fee. Based on the above, I grant the landlord a monetary order pursuant to section 67 of the *Act*, in the amount of **$197.41.**

Conclusion

The landlord's claim is partially successful.

The landlord has been granted a monetary order pursuant to section 67 of the *Act*, in the amount of $197.41. This order must be served on the tenant by the landlord and may be filed in the Provincial Court (Small Claims) if enforcement of the order is required.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 27, 2018

Residential Tenancy Branch