



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

AAT CNC ERP MNRT PSF RP FFL MNDL OPC

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The tenant applied for:

- Cancellation of a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) pursuant to section 47;
- An order to allow access to the rental unit pursuant to section 70;
- An order for repairs or emergency repairs pursuant to section 33;
- A monetary award pursuant to section 67; and
- An order that the landlord provide services or facilities pursuant to section 65.

The landlord applied for:

- An order of possession pursuant to section 55;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 20 minutes. The teleconference line remained open throughout the hearing to allow the tenant to attend. The Notice of Hearing was confirmed to provide the correct call-in number and instructions to join the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they had served the tenant with their application for dispute resolution dated January 7, 2019 and evidence by registered mail on January 9, 2019. The landlord provided a valid Canada Post tracking number as evidence of service.

Based on the evidence I find that the tenant was deemed served with the landlord's application and evidence on January 14, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Preliminary Issue – Res judicata

The principle of *res judicata* prevents an applicant from pursuing a claim that has already been conclusively decided. The landlord testified that there was a previous decision under the file number on the first page of this decision issued on January 25, 2019. The decision includes an Order of Possession issued in the landlord's favour and a finding that the tenancy ended on January 15, 2019.

I find that, as there has been a conclusive finding that this tenancy has ended, it is not open for me to make a subsequent finding on a separate 1 Month Notice. Similarly, I find that the conclusive determination that this tenancy has ended prevents me from making a determination on the portions of both parties' applications pertaining to an ongoing tenancy.

I find that I have no ability to consider all but the monetary claim for the tenant's application and all but the monetary claim and claim for recovery of filing fees of the landlord's application.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?
Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The landlord gave the following evidence. This periodic tenancy began in November 2017. A security deposit of \$437.50 was collected at the start of the tenancy and is still held by the landlord. The rental property is a suite in a detached home with the landlord residing in the other portion of the building.

The landlord testified that the tenant had dug a trench in the yard of the rental property. This trench was dug without the landlord's authorization and contrary to the landlord's verbal warning not to perform work on the property. As a result of the trench and work performed by the tenant the rental unit suffered damage to the foundation, water ingress and damage to the floors and carpeting. The landlord submitted into evidence a

quotation from a third party company stating that the cost of reversing and repairing the damage caused by the tenant would be \$3,858.75.

Analysis

The tenant did not attend the hearing which was scheduled by conference call at 11:00am. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

As the landlord appeared and was prepared to proceed the hearing was conducted as scheduled. In the absence of the tenant, no submissions were made in support of the tenant's application. Consequently I dismiss the tenant's application without leave to reapply.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I accept the landlord's evidence that the tenant dug a trench and caused structural damage to the rental property. I accept the evidence that the cost of repairs and reversing the damage is approximately, \$3,850.00. I find that the damage suffered arose as a direct consequence of the tenant's unauthorized work on the rental property. I find that the landlord has provided sufficient documentary evidence as to the monetary amount of the damage. Accordingly, I issue a monetary award in the landlord's favour in the amount of \$3,850.00.

As the landlord's application was successful the landlord is also entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$437.50 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I find I have no jurisdiction to make a finding on the portions of the applications where a conclusive finding ending the tenancy has been made.

I dismiss the tenant's application without leave to reapply.

I issue a monetary award in the landlord's favour in the amount of \$3,512.50.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the Order may be filed in the Small Claims Division of the Provincial Court and enforced as Order of that Court.

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: February 4, 2019

Residential Tenancy Branch