Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL-S MNDL-S MNRL-S

Introduction

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

- a monetary order for compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord's agent, FL, attended the hearing by way of conference call, the tenant did not. I waited until 1:54 p.m. to enable the tenant to participate in this scheduled hearing for 1:30 p.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing
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.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package on September 21, 2018, by way of registered mail. The landlord provided Canada Post tracking numbers in their evidence package. The landlord testified that the package was sent to the forwarding address provided by the tenant. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application on September 26, 2018, five days after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for money owed or losses pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*?

Background and Evidence

The landlord's agent testified regarding the following facts. This tenancy began on April 1, 2018, with monthly rent set at $2,380.00. The tenant named in this dispute resided upstairs, while another tenant TT resided downstairs. The tenant paid a security and pet damage deposit in the amounts of $1,150.00 each. The landlord still holds both deposits. The landlord was granted an Order of Possession by an Arbitrator on August 7, 2018 after a hearing was held on August 3, 2018. The tenant failed to move out after being served the Order of Possession, and the landlord had to obtain a Writ of Possession from the Supreme Court. The tenancy finally ended when both parties signed a Mutual Agreement for the tenant to vacate on September 1, 2018.

The landlord is seeking compensation for the losses associated with this tenancy as follows:

Cost of repairing the damage to unit by tenant	$525.00
1 Day Over holding for September 2018	79.30
Filing Fee	100.00
Cost of Obtaining Writ of Possession	120.00
Unpaid Utilities for July 12, 2018-September 1, 2018	139.06
Loss of Quiet Enjoyment Claim from downstairs tenant TT	4,943.28
Total Monetary Claim	**$5,906.64**

The landlord's agent provided detailed evidence in support of their claim for damages and losses associated with the tenant's failure to comply with the *Act* and tenancy agreement, including photos, the condition inspection reports, and invoice for repairs, the receipt for the cost of obtaining the Writ of Possession, and calculation of unpaid

utilities. The landlord's agent testified that the tenant did not pay rent for September 2018 and is seeking compensation for over holding.

The downstairs tenant TT also attended the hearing to provide sworn testimony as to loss of quiet enjoyment she suffered due to the upstairs tenant.

Analysis

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

The landlord's agent provided undisputed evidence at this hearing, as the tenant did not attend. The landlord's agent provided undisputed evidence that the tenant did not comply with the Order of Possession granted by the Arbitrator on August 7, 2018. As a result, the landlord suffered a financial loss of $120.00 in order to obtain a Writ of Possession. Accordingly, I allow the landlord's monetary claim for $120.00.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the landlord provided detailed evidence to support that the tenant failed to comply with section 37 of the *Act.* Accordingly the landlord's monetary claim for repairs is allowed.

I find that the landlord provided sufficient evidence to support the tenant failed to pay their share of the utilities as required by the tenancy agreement. Accordingly, I allow the landlords monetary claim for unpaid utilities.

I am satisfied that this tenancy ended on September 1, 2018, and no rent for September 1, 2018 was paid. Accordingly, I allow the landlord $79.30 for over holding.

Lastly, the landlord filed a monetary claim on behalf of the downstairs tenant TT for the losses TT suffered due to the other tenant's actions.

Section 6 of the *Act* states the following:

Enforcing rights and obligations of landlords and tenants

> **6** (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.
>
> (2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) *[determining disputes]*.

Although the landlord filed the application for the loss of quiet enjoyment suffered by TT, the losses claimed are for losses suffered by one tenant due to another tenant's actions. The *Act* only allows for an application for dispute resolution between landlords and tenants. Based on the evidence and testimony I am not satisfied that the application for compensation related to loss of quiet enjoyment falls under the jurisdiction of the *Residential Tenancy Act*. As the actual losses and dispute relate to a dispute between two tenants, I find that I have no jurisdiction to consider this portion of the application.

I allow the landlord's aapplication.to recover the filing fee.

The landlord continues to hold the tenant's security and pet deposit totalling $2,300.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain $963.36.00 of the tenant's deposits in satisfaction of the monetary claim.

Conclusion

I allow the landlord to retain $963.36 of the tenant's security and pet deposits in satisfaction of monetary awards below. I issue a Monetary Order to the tenant in the amount of $1,336.64 for the return of the remaining deposit.

Cost of repairing the damage to unit by tenant	$525.00
1 Day Over holding for September 2018	79.30
Filing Fee	100.00
Cost of Obtaining Writ of Possession	120.00
Unpaid Utilities for July 12, 2018- September 1, 2018	139.06
Less tenant's security and pet deposit	-2,300.00
Total Monetary Order to Tenant	**$1,336.64**

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

I decline to hear the matter related to the loss of quiet enjoyment as I have no jurisdiction to consider that portion of the application.

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 20, 2019

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Residential Tenancy Branch