



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNR, MNSD, MNDC, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover rent, for the cost of garbage disposal, for the cost of bailiff services and for the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented herself. The landlord was represented by her agent.

As both parties were in attendance I confirmed service of documents. The tenant confirmed receipt of the landlord's application for dispute resolution and evidence. The tenant said that he had not submitted any evidence of his own. I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to a monetary order to recover to recover rent, for the cost of garbage disposal, for the cost of bailiff services and for the filing fee?

Background and Evidence

The parties agreed that the tenancy started in September 2000. The monthly rent was \$2,210.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$850.00.

After 18 years of tenancy, on August 27, 2018, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The tenant disputed the notice and the matter was heard by an Arbitrator. In a decision dated October 16, 2018, the landlord was granted an order of possession effective November 01, 2018.

The landlord testified that on November 01, 2018 the parties communicated by text message as they usually did. The tenant informed the landlord that he was running late and that he had moved out most of his belongings. He also let the landlord know that he would clear out the remainder of his belongings on November 02, 2018. The tenant testified that except for one bed, he removed all other items that belonged to him.

As compensation pursuant to a notice to end tenancy for landlord's use of property, the tenant was entitled to the last month of rent-free stay. The tenant had already paid rent for the last month which was October 2018 and therefore the landlord provided the tenant with a cheque in the amount of one month's rent. The tenant had difficulty cashing the cheque on November 01, 2018 and asked to landlord to replace the cheque with cash or e-transfer the amount to his bank account.

The tenant explained that rent was mostly paid by e-transfer and therefore the landlord had the information required to send money to the tenant. However, the landlord chose not to do so and explained during the hearing that she did not feel comfortable transferring money electronically.

The parties continued to communicate by text message but could not come to an agreement of when to meet to exchange money and the keys. During these communications by text message, the tenant informed the landlord that he had moved out on November 02, 2018 and was waiting for the compensation due to him before he returned the keys to the landlord. The tenant also requested the return of the security deposit and provided the landlord with a forwarding address on or about December 14, 2018. The landlord made an application to keep the security deposit within 15 days of receipt of the tenant's forwarding address.

The landlord decided to hire the services of a bailiff. On November 19, 2018, the bailiff attended the rental unit and found that the tenant had already moved out. The report of the bailiff states that the tenants have moved out and have left behind minimal items that the bailiff deemed as garbage.

The landlord agreed that renovations in the rental unit started after the tenant moved out and it was four months before the landlord and her close relatives moved into the rental unit.

The landlord is claiming the following:

1.	Rent for November 01-18, 2018	\$1,326.00
2.	Application fee to register order of possession	\$120.00
3.	Cost of bailiff services	\$1,889.09
4.	Garbage removal	\$845.25
5.	Filing fee	\$100.00
	Total	\$4,280.34

Analysis

1. Unpaid rent for November 01-18, 2018

The tenant testified that he moved out on November 01, 2018 and requested an extra day to move the remainder of his belongings. The tenant also informed the landlord by text message which was their usual form of communication, that he had moved out. The landlord testified that renovations began after the tenant moved out.

The landlord had served the tenant with a notice to end tenancy for landlord's use of property and that was the reason why the 18 year old tenancy ended. The landlord had intentions of moving in but did so approximately 4 months after the tenant moved out.

Based on the above, I find that the landlord did not suffer a loss of income because the rental unit was not available for rent after this tenancy ended. I accept the testimony of the tenant that he had fully moved out on November 02, 2018 and therefore the landlord is not entitled to rent as per her claim.

2. Application fee to register order of possession - \$120.00

3. Cost of bailiff services - \$1,889.09

The landlord filed proof of having incurred the costs of using a bailiff to gain possession of the unit. However I must determine whether the landlord had possession of the unit or required the services of a bailiff to gain possession.

The landlord testified that the tenant's belongings were present in the rental unit and that he had not returned the key as of November 19, 2018. The landlord stated that she called the Residential Tenancy Branch Office for information and was informed that she would have to hire a bailiff to gain possession.

Although the tenant claimed that she hired a bailiff based on the advice given to her during her conversation with an information officer, I have no information to establish upon what statement of fact by the tenant that this 'advice' was based. The role of the information officer is to provide information, not advice as to the rights and obligations of landlords and tenants under the legislation. Information officers do not act as advocates and their role is not to dispense specific advice to landlords or to tenants.

I accept the testimony of the tenant that he had communicated to the landlord that he was fully moved out by November 02, 2018 and therefore I do not find that the landlord was justified in hiring a bailiff in reliance upon the supposed advice. The tenant further added that the back door was left unlocked and this was corroborated by the bailiff's report.

I find that if the landlord believed the tenant was still in occupation of the unit, the landlord had the option of visiting the rental unit by providing proper notice, to determine whether the tenant had moved out or not and accordingly decide whether she would need the services of a bailiff to gain possession.

Section 7 of the Act provides that *a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

In this case I find that the landlord hired a bailiff to gain possession of the unit despite being informed by the tenant that he had moved out and prior to determining whether the tenant was still in occupation of the unit. Therefore I find that the landlord did not make sufficient efforts to minimize the loss she suffered.

Based on the above, I find that the tenant had moved out and therefore the landlord did not require the services of a bailiff to gain possession of the rental unit. Accordingly, I find that the landlord is not entitled to recover the cost of using the services of a bailiff and therefore her monetary claim for items #2 and #3 is dismissed.

4. Garbage Removal - \$845.25

The landlord filed a copy of an invoice to support her monetary claim. The invoice indicates that the removal of garbage was done on December 22, 2018. The tenant moved out on November 02, 2018 and by the landlord's own testimony the renovation work started shortly after.

Given the date of the garbage disposal, it is possible that the bulk of disposal was from garbage generated from the construction that was on going in the rental unit.

The tenant agreed that he left a bed behind and the bailiff's report indicates that the tenant left behind minimal items that the bailiff deemed as garbage. Based on the tenant's testimony, the bailiff's report and the date that the garbage disposal took place, I find that the tenant is responsible for the removal of the bed and the minimal items mentioned in the bailiff's report. I find it appropriate to award the landlord \$100.00 towards the cost of garbage disposal.

5. Filing fee - \$100

The landlord is not successful in proving most of her case and therefore she must bear the cost of filing her own application.

The landlord has established a claim of \$100.00. The landlord agreed that she owed the tenant the equivalent of one month's rent, the security deposit plus the accrued interest. The landlord further agreed to have these items deducted off any award to her resulting from this hearing.

The landlord agreed that the tenant is owed the following:

1.	Compensation pursuant to s.49 notice to end tenancy	\$2,210.00
2.	Return of security deposit	\$850.00
3.	Interest accrued on deposit	\$62.61
	Total	\$3,122.61

Overall the landlord has established a claim in the amount of \$100.00 and has agreed to pay what is owed to the tenant which is compensation pursuant to a s.49 notice and the security deposit plus interest, in order to resolve all pending issues. I find that the landlord owes the tenant \$3,122.61 as indicated in the table above.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of the monetary claim. Because the landlord has established a claim in the amount of less than the security deposit it is appropriate that I order the return of the balance of the security deposit to the tenant.

I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$3,022.61.00 which consists of the difference in the established entitlements of both parties

Accordingly, I so order. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$3,022.61. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$3,022.61**.

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: April 11, 2019

Residential Tenancy Branch