



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and Tenant were both present for the duration of the teleconference hearing. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Landlord confirmed receipt of a copy of the Tenant’s evidence. Neither party brought up any issues regarding service and therefore I find that both parties were served in accordance with Sections 88 and 89 of the *Act*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Landlord entitled to monetary compensation?

Should the Landlord be authorized to retain the security deposit towards compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement submitted into evidence. The tenancy started on July 1, 2018. Monthly rent was \$1,000.00 and a security deposit of \$500.00 was paid at the start of the tenancy. Although the tenancy agreement notes a pet damage deposit, the parties agreed that only a security deposit was paid. The Landlord is still in possession of the full security deposit amount. The Tenant moved out on February 28, 2019.

The Landlord has applied for compensation in the amount of \$3,413.67 which is the cost of bailiff services to move the Tenant out after the Landlord received and served the Tenant with an Order of Possession. The Landlord testified that the Tenant was often late with rent and he would serve a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") when this would occur. He stated that in January 2019 he filed an Application for Dispute Resolution and was awarded a 2-day Order of Possession. The file number for this decision is included on the front page of this decision with the Order of Possession dated January 23, 2019.

The Landlord stated that he served the Tenant with the Order of Possession and she made no attempts to move out. He submitted copies of a text message exchange into evidence dated February 1, in which he stated that the Order was considered served on January 30, 2019. The Tenant responded that she had applied for a review consideration the day prior and that she would like to stay until February 28, 2019. In the text messages she stated that she would wait for the Landlord's response and/or a bailiff.

The Landlord provided testimony that the Tenant did not communicate with him about moving out, despite several attempts to contact her. As such, he stated that he called the Residential Tenancy Branch and it was confirmed that the Tenant's Application for Review Consideration had been dismissed. Therefore, the Landlord stated that on February 5, 2019 he paid a deposit to for bailiff services as he had followed the proper process and the Tenant still had not moved out.

The Landlord stated that the bailiff attended the rental unit on February 19, 2019 and moved the Tenant's belongings out. However, he stated that they received notice that the Tenant had received a stay from the Supreme Court and was able to stay in the rental unit until February 28, 2019. Therefore, the Landlord stated that the bailiff moved the Tenant's belongings back into the rental unit and she moved out on her own on February 28, 2019. The Landlord submitted that he heard about the order from the Supreme Court through the bailiffs who had been notified.

The Landlord stated that he accepted rent for February 2019 on February 7, 2019 but that he did not have an agreement for the Tenant to stay past the effective date of the Order of Possession.

The Tenant testified that she was not aware of the hearing where an Order of Possession was granted and was not aware of the 10 Day Notice either. She stated that there had been an issue with the Landlord accessing her mailbox, so she did not receive the mail and was away at the time as well. She stated that she received the documents on January 30, 2019, after the hearing had already taken place which is why she applied for a review consideration.

The Tenant agreed that rent for February 2019 was paid on February 7, 2019 and therefore she was able to stay until the end of February 2019. As such, she applied to the Supreme Court for a stay of the writ of possession given that rent was paid for the remainder of February 2019. The Tenant submitted a copy of the Supreme Court application and the Order which states the following:

The writ of possession dated 5 February 2019 [city and registration number] is stayed to midday 28 Feb 2019.

The Tenant stated that she had not yet heard back from her review application when she paid rent on February 7, 2019. She also stated that she had been looking for a place and found somewhere for February 28, 2019.

The parties agreed that the Tenant provided her forwarding address by text message in February 2019. Although unsure of the exact date, both parties stated that it was around when the Tenant moved out.

Analysis

Regarding a claim for compensation, Section 7(1) of the *Act* states the following:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

I accept the testimony and evidence before me that establishes that an Order of Possession was granted on January 23, 2019. The text messages submitted into evidence establish that the Order of Possession was served to the Tenant on January 30, 2019 and therefore I find that the Tenant had 2 days from this date to vacate the rental unit.

I also accept the Landlord's testimony that when the Tenant did not vacate he contacted the Residential Tenancy Branch and confirmed that the Tenant's review application was dismissed. Therefore, I find it reasonable that the Landlord would then take steps to apply for a writ of possession and a bailiff given that the Tenant had not moved out.

I find that the Tenant's evidence of the Supreme Court Order confirms that the writ of possession was granted on February 5, 2019 which the Landlord stated was the same day that the deposit was paid to the bailiff. While the parties agreed that the Tenant paid rent on February 7, 2019 and the Tenant provided evidence that on February 19, 2019 she received an order from the Supreme Court to stay in the rental unit until the end of February 2019, I find that this was too late. I accept the testimony of the Landlord that he found out about the Supreme Court Order from the bailiffs when they were informed of the decision, which was after the bailiffs had already attended the property to move the Tenant out of the rental unit.

As stated in Section 7(2) of the *Act*, a party claiming a loss must do what is reasonable to minimize their losses. Based on the testimony and evidence before me, I find that the Landlord took reasonable steps to minimize his losses by following the process for evicting the Tenant for non-payment of rent.

As the Order of Possession was effective 2 days after it was served on January 30, 2019 and was granted based on a 10 Day Notice to End Tenancy for Unpaid Rent, I find

that the Landlord was within his rights to serve the Order and take next steps regarding ending the tenancy. I also note that the rent was paid after the Order of Possession was issued and served, and after the writ of possession was granted and the bailiffs had been scheduled. I find that it was reasonable of the Landlord to arrange to have the bailiffs attend the rental unit, despite later accepting money towards unpaid rent.

Therefore, I am satisfied that the Landlord has established that he experienced a loss that occurred due to the Tenant's breach of the *Act* through non-payment of rent. As stated in Section 26 of the *Act*, a tenant must pay rent when it is due as per the tenancy agreement.

Had the Tenant paid rent when due, I find that the Landlord would not have incurred the bailiff costs as claimed. Although the bailiffs moved the Tenant's belongings back into the rental unit due to the Supreme Court Order, I find that the bailiff costs were still incurred by the Landlord. Accordingly, pursuant to Section 67 of the *Act*, I find that the Landlord is entitled to compensation in the amount of \$3,413.67.

As the Landlord is still in possession of the security deposit in the amount of \$500.00, I refer to Section 38(1) of the *Act* regarding the return of the deposit. This section states that the landlord has 15 days from the later of the date the tenancy ends, or the forwarding address is provided in writing to return the deposit or file a claim against it.

The parties agreed that the forwarding address was provided around the time the tenancy ended, which was February 28, 2019. As the Landlord filed the Application for Dispute Resolution on March 14, 2019, I find that he applied within the 15 days allowable under the *Act*. The Landlord may retain the deposit towards the total amount owing.

As the Landlord was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Landlord is awarded a Monetary Order in the amount outlined below:

Bailiff fees	\$3,413.67
Recovery of filing fee	\$100.00
<i>Less security deposit</i>	<i>\$500.00</i>
Total owing to Landlord	\$3,013.67

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$3,013.67** as outlined above. 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, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an 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: July 05, 2019

Residential Tenancy Branch