



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking:

- Compensation for damage caused by the Tenant, their pets or guests to the unit, site, or property;
- Compensation for money owed or damage or loss under the *Act*, regulation or tenancy agreement;
- Recovery of unpaid rent; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. Neither the Tenant nor an agent for the Tenant attended.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Landlord testified that the Notice of Dispute Resolution Proceeding, including a copy of the Application, the Notice of Hearing, and copies of the documentary evidence before me were sent to the Tenant at their forwarding address by registered mail on November 14, 2019, and provided me with the registered mail tracking number. The Landlord also provided me with a copy of a previous decision from the Residential Tenancy Branch (the “Branch”) in relation to this tenancy, dated October 25, 2019, confirming the Tenant’s forwarding address. The Canada Post website confirms that the registered mail was sent as described above and received on November 18, 2019.

In addition to the above noted confirmation that the Notice of Dispute Resolution Proceeding, including a copy of the Application, the Notice of Hearing, and copies of the

documentary evidence before me were received by the Tenant on November 18, 2019, the Landlord pointed me to the several sections of the previous decision dated October 25, 2019, wherein that Arbitrator stated the following:

“The tenant repeatedly said she would not accept registered mail and additionally said she did not want the landlord to serve her personally as she never wanted to see him again.”

“I find it important to note that the tenant said she would not be accepting the landlord’s potential next application for dispute resolution by registered mail, as she does not collect registered mail. I strongly and repeatedly cautioned the tenant that if the landlord filed an application for dispute resolution and served the tenant at her forwarding address she provided in the hearing by registered mail, an arbitrator at the next hearing could deem the tenant properly served as required by the Act and proceed with the hearing.”

Residential Tenancy Policy Guideline 12 states that where a document is served by registered mail, the refusal of the party to accept or pick up the registered mail, does not override the deeming provision. Where the registered mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

As a result, I find that the Tenant was served the Notice of Dispute Resolution Proceeding, including a copy of the Application, the Notice of Hearing, and copies of the documentary evidence before me, by registered mail on November 18, 2020, in accordance with the *Act* and the Rules of Procedure. Further to this, I find that had the Tenant not received the registered mail as stated above, I nevertheless would have deemed them to have received the registered mail sent to their forwarding address on November 19, 2019, five days after it was sent by registered mail in accordance with section 90 of the *Act* and Residential Tenancy Policy Guideline 12.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states 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 reapply. As the Landlord and I attended the hearing on time and ready to proceed, I am satisfied that the Tenant received notice of the date and time of the hearing, and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 1:30 P.M. on April 2, 2020, despite the absence of the Tenant or an Agent

acting on their behalf. Although the line remained open for 48 minutes, neither the Tenant nor an agent acting on their behalf appeared to provide any evidence or testimony for my consideration.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

Preliminary Matters

Matter #1

At the outset of the hearing the Landlord stated that in addition to the claims already filed, the Tenant had destroyed established grape vines on the property and damaged fiber optic connections to the home. The Landlord stated that the Tenant is aware of having caused this damage and even received a lifetime ban from the internet service provider as a result of the damage caused at the property. The Landlord therefore sought to amend their Application at the hearing to include \$200.00 owed for the repair of this damage.

Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, the application may be amended at the hearing and that if an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. I am satisfied that the Tenant either knew or ought to have reasonably known that the Landlord would seek compensation for this damage at the hearing and that it is therefore reasonable under the circumstances to amend the Application for this purpose. Further to this, I have already found that the Tenant was served with notice of the hearing and it was therefor incumbent upon them to attend the hearing and provide evidence and testimony in their defense, including objections to any proposed amendments from the Landlord. The Tenant did not attend despite being duly served in accordance with the *Act*.

The Application was therefore amended to include these additional monetary claims pursuant to rule 4.2 of the Rules of Procedure.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for damage caused by the Tenant, their pets or guests to the unit, site, or property?
- Is the Landlord entitled to compensation for money owed or damage or loss under the *Act*, regulation or tenancy agreement?
- Is the Landlord entitled to recovery of unpaid rent?
- Is the Landlord entitled recovery of the filing fee?
- Is the Landlord entitled to withhold the Tenant's security deposit?

Background and Evidence

The Landlord stated that the one-year fixed term tenancy began on May 13, 2019, and was set to end on June 1, 2020. The Landlord stated that rent in the amount of \$1,200.00 was due on the first day of each month, and that a security deposit in the amount of \$600.00 was paid by the Tenant, which the Landlord still holds. The Landlord also stated that the tenancy agreement contains a clause that a \$25.00 late fee will be charged each month the Tenant's rent is late. The Landlord provided a copy of the tenancy agreement for my consideration which matches the above testimony.

The Landlord stated that that Tenant advised them without proper notice and without cause to end the tenancy under the *Act*, that they would be ending the tenancy and vacating the rental unit on October 21, 2020, however, the Landlord stated that the Tenant vacated the rental unit and ended the tenancy on October 18, 2020.

The Landlord stated that the Tenant caused significant damage to the rental unit which they were required to repair before the unit could be re-rented. The Landlord stated that it was winter, and they therefore had difficulty finding a contractor to do the work, which was finally completed at the end of November 2019. The Landlord stated that it was also difficult to find a new tenant for the property in winter and that they were only able to secure a new Tenant for the property for December 1, 2020, at a reduced rental rate of \$900.00 per month. The Landlord stated that the Tenant also paid only partial rent for August 2019, and no rent for September and October and owes rent for November as

the unit could not be re-rented due to necessary repairs. In support of this testimony the Landlord provided videos, photographs and invoices, and a monetary order worksheet.

As a result of the above, the Landlord sought the following monetary compensation:

- \$1,992.00 for bathroom repairs required due to intentional damage by a hammer to the tub and four tile walls;
- \$1,081.00 for ceiling repairs required to the unit below due to intentional flooding of the rental unit by the Tenant;
- \$401.00 for gate and fence repairs as the Tenant removed and damaged the gate and fencing to an area to which they were not permitted access under the tenancy agreement;
- \$3,867.00 in unpaid rent for August, September and October of 2019, loss of rent for November of 2019, plus late fees;
- \$100.00 for the cost of replacing damaged established grape vines;
- \$100.00 for the cost of repairing fiber optic cables and attachments to the home; and
- \$100.00 for recovery of the filing fee.

The Landlord requested authorization to withhold the \$600.00 security deposit towards the above noted amounts owed.

No documentary evidence was submitted on behalf of the Tenant for my review and neither the Tenant nor an agent acting on their behalf attended the hearing to provide any testimony for my consideration.

Analysis

Section 32 (3) of the *Act* states that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 26 (1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Section 7 of the Residential Tenancy Regulation states that if the tenancy agreement provides for it, an administrative fee of not more than \$25.00 can be charged by the landlord for late payment of rent.

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

I am satisfied based on the uncontested and affirmed testimony of the Landlord and the documentary evidence before me that the Tenant caused damage to the rental unit in the amount of \$3,674.00, that this damage resulted in a loss of rent for November 2019, and that the Landlord acted reasonably in mitigating their loss by having the repairs completed as soon as reasonably possible under the circumstances and re-renting the unit at a loss of \$300.00 per month. I am also satisfied based on the uncontested and affirmed testimony of the Landlord and the documentary evidence before me that rent in the amount of \$1,200.00 was due each month, that the Tenant failed to pay rent in full and on time as required on several occasions, that the Tenant did not have a right under the *Act* to deduct all or a portion of the rent, and that the Landlord was entitled to charge a \$25.00 late fee each month that rent was late or entirely unpaid under the tenancy agreement. As a result, I am satisfied that the Landlord is entitled to the \$3,867.00 sought for unpaid rent, loss of rent, and late fees.

Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to recover the \$100.00 filing fee and to retain the Tenant's \$600.00 security deposit in partial repayment of the above owed amounts.

As a result of the above, and pursuant to section 67 of the *Act*, the Landlord is therefore entitled to a Monetary Order in the amount of \$7,041.00: \$7,641.00 owed for damage to the rental unit, monetary loss, outstanding rent, late fees and recovery of the filing fee, less the \$600.00 security deposit retained by the Landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$7,041.00. 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: April 3, 2020

Residential Tenancy Branch