



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: **OPC, MNDCL, MNRL, MNDL, FFL**
 TT: **CNC, OLC, LRE, PSF, AAT, MNDCT**

Introduction

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

The landlord applied for:

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

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 that the landlord comply pursuant to section 62;
- An order suspending or setting conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- An order that the landlord provide services or facilities pursuant to section 65;
- An order that the landlord allow access to the rental unit pursuant to section 70; and
- A monetary award for damages and loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by their agent.

As both parties were present service was confirmed. The parties each testified that they had been served with the respective materials. While the landlord said that they were uncertain if they had all of the contents of the tenant’s evidence package, they

confirmed receipt of the package provided. Based on the testimonies I find each party was duly served with the respective materials in accordance with sections 88 and 89 of the Act.

At the outset of the hearing the parties testified that this tenancy has ended, and the tenant has vacated the rental unit. Accordingly, both parties withdrew the portions of their application pertaining to an ongoing tenancy and the only active issues are their respective monetary claims.

Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. I find that both parties submitted numerous pieces of individual evidence in a haphazard and poorly organized manner. The parties filed many individual files instead of a single pdf file with numbered pages. The file names are inconsistent and unclear as to their contents so that it is confounding for the reader. Files are uploaded non-sequentially in no discernable order so that locating individual pieces of evidence is difficult and time consuming. While I have not excluded any of the documentary evidence of either party, I find that the poor presentation detrimentally affects the strength of submissions and the parties are advised to submit all evidence in a single numbered pdf file containing only relevant materials.

Issue(s) to be Decided

Is the landlord or tenant entitled to a monetary award as claimed?

Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the respective claims and my findings around each are set out below.

This periodic tenancy began on January 1, 2019. Monthly rent is \$1,450.00 payable on the first of each month. The tenant was also responsible for paying a Netflix subscription fee of \$14.00 monthly. A security deposit of \$725.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at any time for this tenancy.

The parties agree that the tenant failed to pay rent or their Netflix fee for the months of August and September, 2020. The landlord submits that as at the date of the hearing there is a rental and utility arrear of \$2,928.00.

The tenant characterizes their treatment by the landlord to be “harassment, intimidation, threats and verbal abuse”. The tenant describes loud music played early mornings on the rental property which disturbed them. The tenant submits that the landlord vandalized their property, left dead vermin in their rental suite and as a result were unable to remain in the rental unit. The tenant seeks a monetary award in the amount of \$22,483.52 which they said was for “bad faith”.

The landlord disputes the tenant’s characterization of their behaviour. The landlord submits that during the tenancy the gate to the rental property was damaged by the tenant or someone invited on the premises by the tenant and the tenant refused to repair the damage. The landlord submits that the cost of repairs to the gate is \$3,622.50 and submits photographs of the damage and an invoice for the work.

The landlord submits that the rental unit required considerable cleaning, maintenance and repairs after the tenant vacated the suite. The parties agree that the tenant left a considerable amount of personal possessions in the rental suite. The landlord submitted into documentary evidence various photographs of the rental unit and invoices, estimates and receipts in support of their monetary claim in the amount of \$7,122.24.

Analysis

The evidentiary onus lies with the applicant to establish their claim on a balance of probabilities as set out in Residential Tenancy Rule of Procedure 6.6.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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.

I find the tenant's claim for a monetary award to not be sufficiently supported in the evidence. I find that the tenant's submissions primarily consist of accusations, subjective grievances and complaints with little documentary evidence in support. I find the portions of the written correspondence between the parties to not show any harassment or threats on the part of the landlord. I find the tenant's characterization of the landlord to not be supported in the evidence and have little air of reality. There is little evidence to support the tenant's hyperbolic testimony regarding the landlord's actions and I find that the tenant has not established any portion of their claim on a balance of probabilities. Consequently, I dismiss the tenant's application in its entirety without leave to reapply.

I accept the evidence of the parties that the tenant failed to pay rent and utilities for the months of August and September, 2020. I find that there was an enforceable tenancy agreement between the parties wherein the tenant was obligated to pay monthly rent in the amount of \$1,450.00 and utilities in the amount of \$14.00. I accept the evidence that there is an arrear of \$2,928.00 as at the date of the hearing and issue a monetary award in the landlord's favour for that amount.

I accept the evidence of the parties that there was damage to the front gates of the rental property. It is apparent that the issue was discussed by the parties and, as shown in some of the correspondence, the tenant at one point assumed responsibility for the damage and the cost of repairs. While the tenant testified at the hearing that they dispute that they are liable for the damage to the gates, it is evident in the documentary evidence that as of June 26, 2020, the tenant accepted their responsibility for repairing the damage in stating "Ok make arrangements Ill pay ya ok". I accept the evidence of the landlord that the cost of the gate repair is \$3,622.50 and issue a monetary award accordingly.

In the absence of a move-in condition inspection completed by the parties at the start of the tenancy in accordance with the Act and regulations I find that there is insufficient evidence to support all of the landlord's monetary claim for work done on the rental unit. While the landlord has submitted photographs and video of the state of the rental unit after the tenancy ended, I find that I am not satisfied that the all of the damage the landlord claims is attributable to the tenancy.

Specifically, I am not satisfied that the landlord's claim for painting of the suite and flooring repairs is a loss attributable to the tenant and this tenancy. I find that the evidence of the landlord shows a suite with considerable items strewn about but I am unable to determine that the floors and walls of the suite are of such disrepair that work

is reasonable. Furthermore, in the absence of a proper move-in condition inspection report completed by the parties I find that there is insufficient evidence of the state of the rental unit prior to the tenancy to establish that damages are the result of this tenancy. Consequently, I dismiss the portions of the landlord's monetary claim seeking an award for flooring repairs and painting.

I accept the landlord's submission that some cleaning, repairs and junk removal was required after the tenancy ended. I am satisfied with the evidence of the parties that the tenant left considerable personal possessions and furnishings in the rental unit and stated in their written correspondence their intention to leave the items in the suite. I accept the landlord's evidence that they incurred costs to remove the items and am satisfied, on the basis of the invoices and receipts submitted, that the cost was reasonable given the size of the rental unit and scope of work performed. Accordingly, I issue a monetary award in the landlord's favour in the amount of \$2,423.50 for cleaning, junk removal and repairs.

As the landlord was successful in their application they are entitled to recover their 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 full security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$ on the following terms:

Item	Amount
Unpaid Rent and Utilities Aug, Sept 2020	\$2,928.00
Cleaning, Junk Removal and Repairs	\$2,423.50
Gate Repair	\$3,622.50
Filing Fee	\$100.00
Less Security Deposit	-\$725.00
TOTAL	\$8,349.00

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.

The balance of the landlord's application and tenant's application in its entirety is dismissed without leave to reapply.

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: September 28, 2020

Residential Tenancy Branch