



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Maple Leaf Property Management and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes TT: FFT, CNR, OLC, MNDCT, DRI
 LL: OPR-DR-PP, OPRM-DR, FFL

Introduction

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

The corporate 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, named the personal landlord in their application, and applied for:

- Authorization to recover the filing fee from the landlord pursuant to section 72;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- A monetary award for damages and loss pursuant to section 67; and
- A dispute of a rental increase pursuant to section 43.

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 corporate landlord was represented by its agents. Agent CS primarily spoke on behalf of the corporate entity (the “landlord”).

At the outset of the hearing the personal landlord confirmed that they are an employee and agent of the corporate landlord and not a party to the proceeding. With the parties’

consent the personal respondent was replaced with the corporate entity and the revised style of cause is used in the present decision.

The tenant testified that they did not recall serving the landlord with their application. The landlord testified that they had not been served with the tenant's application in accordance with the Act. Based on the testimonies, while I find that the tenant did not serve the landlord with their application in accordance with the Act, as the landlord was aware of the tenant's claim and was prepared to proceed, and I find no infringement on the principles of procedural fairness and natural justice, I find that the landlord was sufficiently served with the tenant's materials in accordance with section 71(2)(c) of the Act.

The landlord testified that they served the tenant with their notice of application and evidence by posting on the rental unit door on September 17, 2020. The tenant testified that they did not recall being served but did not dispute the landlord's evidence of service. Based on the evidence I find the tenant was duly served with the landlord's materials in accordance with sections 88 and 89 of the Act.

At the outset of the hearing the parties testified that the tenant has vacated the rental unit and the parties each withdrew the portions of their application seeking a determination on an Order of Possession and relief related to an ongoing tenancy.

The landlord made an application requesting to amend the monetary amount of their claim. The landlord indicated that since the application was filed additional rent has come due. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as additional rent becoming due is reasonably foreseeable, I amend the landlord's application to increase their monetary claim to \$1,2800.82.

Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the 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 claim and my findings around each are set out below.

This periodic tenancy began in November, 2019. The monthly rent was \$3,250.00 payable on the first of each month. The tenant was provided a \$500.00 discount on the rent for the first 6 months of the tenancy until May 1, 2020. The landlord collected a security deposit of \$1,625.00 and pet damage deposit of \$1,625.00 at the start of the tenancy and still holds those amounts. The tenant vacated the rental unit sometime in September, 2020. The parties testified that they prepared a condition inspection report at the start and end of the tenancy.

The parties agree that there is a rental arrear of \$11,750.00 as at November 6, 2020, the date of the hearing. The parties gave conflicting testimonies about whether they entered into a valid Repayment Plan for an initial arrear of \$8,500.00. In any event, while the tenant disputed that they entered into an agreement to repay the outstanding unpaid rent, they acknowledged that the amount sought by the landlord is the correct of unpaid rent.

The landlord gave evidence that the tenant also failed to pay utilities for the rental unit and the landlord was required to pay the outstanding balance of \$273.82.

The landlord gave evidence that the rental unit required some cleaning and repainting work after the tenant vacated. The landlord submitted into documentary evidence numerous photographs of the condition of the rental suite and invoices for cleaning and painting. The landlord submits that the total cost of the work done is \$777.00.

The tenant testified about their limited financial means, various obstacles they faced in paying the rent as agreed to in the tenancy agreement and how they believe that the landlord ought to have continued to offer the \$500.00 discount on the monthly rent beyond the initial 6 month term they had agreed upon. The tenant submits that the landlord ought to make additional concessions to the tenant and that they ought to be provided a retroactive rent reduction due to the ongoing Covid19 pandemic.

Analysis

Pursuant to Residential Tenancy Rule of Procedure 6.6 the onus to establish their claim on a balance of probabilities lies with the applicant making the claim.

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 that the tenant's claim to have no substantive merit. Their submissions are simply that they are of limited financial means and ought to be provided retroactive rent reduction and forgiven their rental arrear. I find that their expectation that they should not be subjected to the terms of the tenancy agreement they signed or the provisions of the *Act* and regulations to not be at all persuasive and supported by no authority. I find their rambling testimony regarding their personal circumstances to not be supported in any documentary materials, have little air of reality and be wholly irrelevant to their claim. I find that the tenant has established no portion of their claim on a balance of probabilities and accordingly dismiss it in its entirety without leave to reapply.

I find that there was a valid and enforceable tenancy agreement between the parties wherein the tenant was obligated to pay monthly rent in the amount of \$3,250.00. While the tenancy agreement provides a discount of \$500.00 for the first 6 months of the tenancy, I find that the agreement is clear that the base rate of rent is \$3,250.00. I accept the undisputed evidence of the parties that the tenant failed to pay the full rent as required for the months of April, May, June, July, August and September, 2020 and that there is a rental arrear of \$11,750.00 as at the date of the hearing.

While both parties spent considerable time on the issue of whether they had entered into a repayment plan, I find that to be irrelevant to the matter at hand for the following reasons.

While a portion of the rental arrear arises from unpaid affected rent as defined in the COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation, the issue is expanded upon in Residential Tenancy Policy Guideline 52 which states:

If a tenancy has ended prior to a repayment plan being given, or ends after a repayment plan has been given or there is a prior agreement and the tenant has failed to pay an installment, the arbitrator may grant a monetary order that the unpaid affected rent be paid in full as of the date of the order.

In the matter before me, I accept the evidence of the parties that this tenancy has ended. Accordingly, I issue a monetary order in the landlord's favor in the full amount of \$11,750.00 as at the date of the hearing.

I accept the undisputed evidence of the parties that the tenant failed to pay utilities to the providers as required under the written tenancy agreement and that the landlord incurred costs as a result. I accept the undisputed testimony of the landlord that the total cost of the utility arrear is \$273.82. Accordingly, I issue a monetary award in the landlord's favour in that amount.

I accept the evidence of the landlord that they incurred costs to clean and repair the rental unit after the tenant had vacated the rental unit. While the tenant disputes the landlord's assessment of the condition of the suite, the landlord provided numerous photographs to support their position. I find that due to the preponderance of evidence of the landlord, I am satisfied that the rental unit incurred damage greater than what would be reasonably expected from simple occupancy and that the landlord incurred costs to remedy this damage. I further accept the evidence of the landlord that the cost of their work was \$777.00. I find the copies of the invoices submitted by the landlord to demonstrate that the work was reasonable under the circumstances to restore the rental unit to its pre-tenancy condition. Therefore, I issue a monetary award in the landlord's favour for that amount.

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

Conclusion

The tenant's application is dismissed without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$9,650.82 under the following terms:

Item	Amount
Unpaid Rent	\$11,750.00
Unpaid Utilities	\$273.82
Cleaning and Repair Costs	\$777.00

Filing Fee	\$100.00
Less Security Deposit	-\$1,625.00
Less Pet Damage Deposit	-\$1,625.00
TOTAL	\$9,650.82

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: November 6, 2020

Residential Tenancy Branch