



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's Application: MNRL-S, OPC, OPU, MNDCL-S, FFL

Tenant's Application: FFT, CNR, CNC, MNDCT

Introduction

This hearing was set to deal with cross applications via teleconference call. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a One Month Notice to End Tenancy for Cause and for monetary compensation for damages or loss under the Act, regulations or tenancy agreement. The landlord applied for an Order of Possession for unpaid rent and cause; a Monetary Order for unpaid rent, utilities and strata bylaw fines; and, authorization to retain the security deposit.

Only the landlord appeared for the hearing, despite leaving the teleconference call open at least 50 minutes.

Since the tenant did not appear for the hearing to present his claims against the landlord, I dismissed the tenant's Application for Dispute Resolution without leave to reapply.

I explored service of the landlord's hearing materials upon the tenant. The landlord testified that the building manager served the tenant with the landlord's proceeding package and evidence available at that time, in person, in the lobby of the residential property on October 8, 2020. The landlord observed the service and took a video recording of it. I was satisfied the tenant was duly served with the landlord's proceeding package and evidence on October 8, 2020.

The landlord uploaded additional evidence and a revised Monetary Order Worksheet to the Residential Tenancy Branch on October 25 and 26, 2020. The landlord testified that these additional documents were served to the tenant by sliding them under the door of

the rental unit on the same date they were uploaded; however, the landlord had also stated that he considered the tenant to have abandoned the rental unit as of October 15, 2020 and the landlord took possession of the rental unit on October 25, 2020 after obtaining an Order of Possession under a previous Application for Dispute Resolution that was heard on October 20, 2020 (file number referenced on the cover page of this decision). I was unsatisfied the tenant received the documents slid under the door of the rental unit on or after October 25, 2020 and I did not admit the additional evidence or consider the additional claims included on the revised Monetary Order Worksheet as to do so would violate the principles of natural justice and the Rules of Procedure. However, I informed the landlord he was at liberty to make another Application for Dispute Resolution to claim any other damages or losses not already included on the Monetary Order Worksheet dated October 6, 2020.

Since the landlord has already obtained an Order of Possession, I do not provide one with this decision and the only matter considered below is the landlord monetary claim against the tenant that was served on October 8, 2020.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant for unpaid rent and utilities and strata bylaw fines?
2. Is the landlord authorized to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The tenancy started on August 15, 2020 for a fixed term tenancy set to expire on February 15, 2021 at which point the tenant was required to vacate the rental unit so that the landlord or landlord's close family member may occupy the rental unit. The tenant was required to pay rent of \$1700.00 on the first day of 15th day of every month.

The landlord collected a security deposit of \$850.00; however, the landlord was authorized to deduct \$100.00 from the security deposit pursuant to the dispute resolution decision issued on October 20, 2020.

Below, I have summarized the landlord's monetary claims against the tenant that were served upon the tenant on October 8, 2020:

Hydro bills

The landlord seeks recovery of \$56.34 for hydro costs incurred for the period of August 15, 2020 to September 1, 2020 and \$64.18 for the period of September 2, 2020 to September 26, 2020. The landlord provided two hydro bills and a calculation on the move-in inspection report as evidence for this proceeding.

Strata by-law fines

The landlord withdrew this claim, seeking liberty to reapply, as the landlord had not yet obtained documentary evidence showing the fines have been charged to his account. The landlord's request was granted and I dismissed this claim with leave to reapply.

Unpaid and/or loss of rent

The landlord had claimed unpaid and loss of rent for the two month period of September 15, 2020 through to November 14, 2020 in filing the Application for Dispute Resolution.

The landlord submitted that the tenant was served with a One Month Notice to End Tenancy for Cause in person on August 30, 2020 and the notice had a stated effective date of September 30, 2020 (although it should have read October 14, 2020); however, the tenant filed to dispute the notice and the hearing was set for today's date.

The landlord testified the tenant did not pay rent that was due on September 15, 2020 and a 10 Day Notice to End Tenancy for Unpaid Rent was served upon the tenant on September 18, 2020. The tenant did not pay the outstanding rent after receiving the 10 Day Notice and the landlord had filed for an Order of Possession based on the 10 Day Notice to be heard on this date; however, the landlord also filed an Application for Dispute Resolution seeking an early end of tenancy under section 56 of the Act and that matter was heard and decided on October 20, 2020 at which time the landlord was granted an Order of Possession.

The landlord testified that on October 15, 2020 the tenant sent a text message to the landlord stating he was "moving out" but the tenant did not return the keys or fob for the property. According to the landlord, the tenant told the building manager on October 15, 2020 that he had moved out but that he would not be returning the keys or fob. The landlord considered the rental unit abandoned as of this date; however, the landlord waited until after receiving an Order of Possession under the previous Application for

Dispute Resolution before taking possession of the rental unit on October 25, 2020. As recorded in the decision issued on October 20, 2020:

“The landlord provided copies of photographs and written evidence in the form of text messages to confirm their assertion that the tenant appears to have moved out of the rental unit between October 13 and 15, 2020. Although the tenant does not appear to be living in the rental unit, the tenant has not returned the keys to the rental unit or the fob enabling them to access this multi-storey building. The landlord maintained that the tenant has refused to fully surrender possession of the rental unit until the landlord has an Order of Possession issued by the Residential Tenancy Branch.”

The landlord requested recovery of loss of rent to the period of September 15, 2020 through to October 25, 2020 during the hearing. The landlord testified that he is in the process of making repairs to the rental unit that the landlord asserts were caused by the tenant and after repairs are made he will be moving into the rental unit. The landlord indicated he will be making a damage claim against the tenant.

Analysis

Upon review of the unopposed evidence before me, I provide the following findings and reasons.

Hydro bills

Upon review of the tenancy agreement, I accept that the rent did not include electricity and I find the tenant was responsible for paying for the hydro bills for the property. The landlord provided copies of the hydro bills and a calculation to support the amounts claimed and I award the landlord recovery of those amounts: \$56.34 and \$64.18.

Strata bylaw fines

This claim was withdrawn and leave to reapply granted.

Unpaid and/or loss of rent

Upon review of the tenancy agreement, the 10 Day Notice, and upon consideration of the unopposed testimony, I accept that the tenant did not pay rent of \$1700.00 that was due on September 15, 2020 and I award the landlord recovery of that amount.

Under section 37 of the Act a tenant is required to return any keys or other means of access to the property when the tenant vacates the rental unit. I accept the landlord's unopposed submissions that the tenant refused to return the keys, fob or other means of access to the rental unit and the residential property until the landlord obtained an Order of Possession lead to the landlord waiting to take possession of the rental unit on October 25, 2020 after posting the Order of Possession. As such, I find the landlord entitled to recover loss of rent to this date from the tenant. I calculate the loss of rent for the period of October 15 – 25, 2020 to be: \$548.39 [$\$1700.00 \times 10 / 31$ days] and I award that amount to the landlord.

Any loss of rent after October 25, 2020 that resulted from damage caused by the tenant may be made as part of the landlord's future damage claim, if one is made.

Filing fee, security deposit and Monetary Order

The landlord's Application for Dispute Resolution had merit and I award the landlord recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution.

I authorize the landlord to retain the balance of the tenant's security deposit (\$750.00) in partial satisfaction of the amounts awarded to the landlord with this decision.

In keeping with all of the findings and awards made above, I provide the landlord with a Monetary Order in the net amount calculated below to serve and enforce upon the tenant.

Hydro bills (\$56.34 + \$64.18)	\$ 120.52
Unpaid rent – September 2020	1700.00
Unpaid and/or loss of rent for October 15 - 25, 2020	548.39
Filing fee	100.00
Less: remaining balance of security deposit	<u>(750.00)</u>
Monetary Order	\$1718.91

Conclusion

The landlord has been authorized to retain the balance of the tenant's security deposit and has been provided a Monetary Order for the net balance owing of \$1718.91 to serve and enforce upon the tenant.

The landlord is at liberty to make another Application for Dispute Resolution to claim for strata bylaw fines and any other damages or loss associated to the tenancy not considered under this Application for Dispute Resolution.

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 05, 2020

Residential Tenancy Branch