



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GURDEV HOLDINGS LTD and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT, OLC, MNDCT, RR, MNRT, FFT
OPR-DR, OPRM-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on January 2, 2021. The Tenant applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent (the “Notice”) issued on January 2, 2021, for more time to file to dispute the Notice, for an order for the Landlord to comply with the *Act* and/or tenancy agreement, for a rent reduction, for a monetary order for monetary losses or other money owed, for a monetary order for the recovery of their cost for making emergency repairs, and to recover the filing fee paid for this application.

The Landlord’s Application for Dispute Resolution was made on January 25, 2021. The Landlord applied for an order of possession to enforce a 10-Day Notice for Unpaid Rent and Utilities (the Notice) issued on January 2, 2021, for a monetary order for unpaid rent and utilities and to recover the filing fee paid for this application.

The Landlord and the Tenant attended the conference call hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter – Issues Amended

At the outset of these proceedings, the parties agreed that the Tenant had moved out of the rental unit on January 13, 2021.

The Tenant agreed that as this tenancy had ended before the date of these proceedings, that their claims to cancel the 10-Day Notice to End Tenancy for Unpaid Rent (the “Notice”) issued on January 2, 2021, for more time to file to dispute the Notice, for an order for the Landlord to comply with the Act and/or tenancy agreement, and for a rent reduction, were no longer required.

The Landlord agreed that as this tenancy had ended before the date of these proceedings, that they no longer required an order of possession for the rental unit.

All parties agreed that the Tenant’s application would be amended during these proceedings to remove their claims that their claims to cancel the 10-Day Notice to End Tenancy for Unpaid Rent (the “Notice”) issued on January 2, 2021, for more time to file to dispute the Notice, for an order for the Landlord to comply with the Act and/or tenancy agreement, and for a rent reduction.

All parties agreed that the Landlord’s application would be amended during these proceedings to remove their claims for an order of possession.

I will proceed on the remaining matters before me of the Landlord’s claims for a monetary order for unpaid rent, and the recovery of their filing fee and of the Tenant’s claims for a monetary order for monetary losses or other money owed, for a monetary order for the recovery of their cost for making emergency repairs, and to recover the filing fee paid for this application.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent and utilities?
- Is the Landlord entitled to the return of his filing fee?
- Is the Tenant entitled to a monetary order for losses or other money owed?
- Is the Tenant entitled to a monetary order for their costs to make emergency repairs to the rental unit?
- Is the Tenant entitled to the return of his filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on June 1, 2019, as a month-to-month tenancy. That rent in the amount of \$800.00 is to be paid by the first day of each month and that the Landlord had collected a \$400.00 security and a \$400.00 pet damage at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlords testified that the Tenant had not paid the rent for January 2021 in the amount of \$800.00. The Landlord is requesting a monetary order for the outstanding rent.

The Tenant agreed that they had not paid the rent for January 2021.

The Tenant testified that they are claiming \$326.66 in the recovery of their rent paid between June 1, 2019 to June 16, 2019. The Tenant testified that the Landlord had made them pay for the full month of June 2019 even though they knew that the Tenant would not be moving in until June 17, 2019. The Tenant testified that they feel this was wrong of the Landlord to do, and they are requesting the return of this portion of their rent.

The Landlord testified that they did know the Tenant would not be moving in until June 17, 2019, but that they were looking for a tenant to take the rental unit for the full month of June 2019 and that it was the Tenant decision to take the place early, so someone else did not take it before them. The Landlord testified that they did give them \$100.00

off the rent for that month but that they do not feel the Tenant is due any of the agreed to rent back for this period.

The Tenant testified that they are claiming \$171.42 in the recovery off all of their rent paid for 6 days due to the fact that they had no hot water for six days in their rental unit. The Tenant testified that they contact the Landlord in February 2020 and advised the Landlord that there was no hot water. The Tenant testified that they believe the Landlord was slow in repairing this and that they are due the return of their rent for this period due to the Landlord's delay in completing this repair.

The Landlord agreed that the Tenant contacted them and advised them of the needed repair to the hot water but that the delay in completing this repair was caused by the Tenant, not the Landlord. The Landlord testified that the Tenant had a guard dog in the rental unit and that the Landlord was unable to attend the rental unit without the Tenant being there to control the dog. The Landlord testified that the guard dog would not allow anyone into the unit without the Tenant there. The Landlord also testified that they asked the Tenant to lock the dog up so they could attend to make the repairs, but the Tenant refused, so they had to wait for an arranged time when they could attend the rental unit with the plumber when the Tenant was home.

The Tenant testified that they are claiming \$165.32 for the repair of the washing machine in the rental unit. The Tenant testified that the washing machine broke down and that Landlord refused to repair the machine, so they had to call someone to repair the machine at their expense. The Tenant submitted a copy of the washing machine repair invoice into documentary evidence.

The Landlord testified that the Tenant had never informed them that the washing machine required repair and that had they known they would have had their repair person, that they keep on staff full time, attend the rental unit to make the necessary repairs. The Landlord submitted that they already pay to maintain a full-time repair person for their rental units, and that had the Tenant called them and informed them of this needed repair, the expense of the \$165.32 service call would never have happened, so they should not be responsible for this bill.

Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 26(1) of the Act states that a tenant must pay the rent when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

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

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, I accept the agreed-upon testimony of these parties that the rent has not been paid January 2021 for this tenancy. I find that the Tenant breached section 26 of the Act when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$800.00. I grant permission to the Landlord to retain the \$400.00 security deposit and \$400.00 pet damage deposit in full satisfaction of this award.

As for the Tenant's claims, for \$326.66 in the recovery of their rent paid between June 1, 2019 to June 16, 2019, for \$171.42 in the recovery off rent for 6 days due delayed repairs, and \$165.32 for the repair of the washing machine, I will address each one individually.

The Tenant's has claimed \$326.66 in the recovery of their rent paid between June 1, 2019 to June 16, 2019. I have reviewed the testimony and documentary evidence

submitted by these parties, and I see no reason for the Tenant to have not moved into the rental unit as of June 1, 2019, other than they had decided that they would not be moving in until June 17, 2019. I find that there is nothing under the Act that would allow a tenant to recovery rent paid for a period of time in which they chose not to reside in the rental unit; therefore, I dismiss this portion of the Tenant's claim.

The Tenant's second claim for \$171.42 in the recovery of their rent paid for 6 days due a delay in the repair of the hot water to the rental unit. I accept the testimony of the Landlord that the delay in the repair of the hot water was caused by the Tenant's refusal to secure their dog, which prevented the Landlord from attending the rental unit to make the required repairs while the Tenant was not home. I find that this Landlord did take immediate action to make these repairs but that it was the actions of the Tenant that cause the delay, not the Landlord. As the Tenant caused the delay in these repairs being completed, I find that the Tenant is not entitled to compensation due to this delay. Therefore, I dismiss this portion of the Tenant's claim.

Finally, the Tenant is claiming \$165.32 for the repair of the washing machine in the rental unit. Section 33 of the Act permits a tenant to make emergency repairs to the rental unit and recover their costs for those repairs from the Landlord. Section 33 (1) defines emergency repairs as the following:

Emergency repairs

33 (1) *In this section, "emergency repairs" means repairs that are*

- (a) urgent,*
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and*
- (c) made for the purpose of repairing*
 - (i) major leaks in pipes or the roof,*
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,*
 - (iii) the primary heating system,*
 - (iv) damaged or defective locks that give access to a rental unit,*
 - (v) the electrical systems, or*
 - (vi) in prescribed circumstances, a rental unit or residential property.*

Section 33(1c) of the Act restricts a Tenant to only making emergency repairs to the systems listed, as a washing machine is not one of the systems included in section

33(1c) I find that the Tenant was not within their right to make these repairs and change them back to the Landlord.

The Tenant's recourse in this instance would have been to submit a written request to the Landlord, requesting that the washing machine be repaired. If the Landlord refused to repair the washing machine, the Tenant's next step would have been to file for a hearing with the Residential Tenancy Branch, requesting that an Arbitrator order the Landlord to repair the washing machine, and possibly requesting a rent reduction or compensation for the delay in the repair of the washing machine. At no time does a tenant have the right to make regular repairs to a rental unit without the Landlord's consent.

Additionally, I accept the Landlord's testimony that they retain a repairs person full time on their staff and that had they been advised of this needed repair, the Landlord would have been able to make these repairs without any additional cost.

For the above stated reasons, I dismiss the Tenant's claim for the recovery of their costs to repair a washing machine in the rental unit.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing. As the Tenant has not been successful in their application, I find that the Tenant is not entitled to the recovery of their filing fee.

Overall, I grant the Landlord a \$100.00 monetary order, comprised of the \$800.00 in unpaid rent for January 2021, \$100.00 in the recovery of their filing fee, less the \$400.00 security deposit and the \$400.00 pet damage deposit they are holding for this tenancy.

Conclusion

I find for the Landlord under sections 26, 65 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$100.00**. 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.

I grant permission to the Landlord to retain the security deposit and pet damage deposits for this tenancy, in partial satisfaction of the amounts awarded in this decision.

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 15, 2021

Residential Tenancy Branch