



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cedar West Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for compensation for money owed or loss, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

At the outset of the hearing, the parties had confirmed that they had exchanged their respective evidence. The parties confirmed they were prepared to proceed and had no objection to the review of the evidence. The parties also confirmed they were not making an unofficial audio recording of the proceeding.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for money owed, loss and damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of their claim?

Background and Evidence

The parties agreed that the tenancy began on March 1, 2015. Current rent in the amount of \$725.00 was payable on the first of each month. The tenant paid a security deposit of \$350.00.

On October 6, 2020, the parties were both present at a hearing, which was scheduled based on an application for dispute resolution filed by the tenant. The issue before the

Arbitrator was whether a One Month Notice to End Tenancy for Cause should be cancelled. On October 7, 2020, the Arbitrator had found that the landlord had cause to end the tenancy. The tenant's application was dismissed, and the landlord was granted an order of possession, which was effective 2 days after it was served on the tenant. I have noted the file number of this decision on the covering page.

The tenant did not vacate the premise in accordance with the order of possession, and on November 3, 2020, the landlord obtained a writ of possession from the Supreme Court, which was enforced by the bailiffs on December 1, 2020.

At the outset of the hearing the landlord clarified their application. The landlord testified that they had to pay a deposit to the bailiffs in the amount of \$3,500.00; however, the actual amount was lower. The landlord seeks to recover the cost of \$2,534.66.

The landlord further clarified that claim for loss of rent for December 2020. The landlord stated that the tenant paid the rent for December 2020; however, the advocate wanted the tenant to be credited with this money. The landlord stated they just want an order authorizing them to keep it as rent, because it was the tenant's failure to vacate the rental unit and they could not advertise or even attempt to re-rent the unit until the tenant had vacated. The landlord stated they were unable to find a new renter for any portion of December 2020.

The landlord testified that the tenant caused damage to the rental unit by smoking and it had to be repainted. The landlord stated that is painted in 2015, just prior to tenancy commencing. The landlord seeks to recover the cost of \$290.00.

The landlord withdraws their claim for pest control treatment.

The advocate submits that it was unreasonable that the tenant was only given 2 days to vacate the property.

The advocate submits that the tenant had paid the rent for December 2020, and then the bailiff removed the tenant on December 1, 2020. The advocate submits that the tenant should be entitled to the return of rent, as they were not living there.

The advocate submits that is unreasonable for the landlord to be claiming the cost of painting since it had been over 5 years since it was last painted.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard,

that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

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

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The tenant did not comply with the order of possession that was issued on October 7, 2020. The landlord had to obtain a writ of possession in Supreme Court, which was enforced by the bailiffs on December 1, 2020. I find that due to the tenant's failure of complying with order of possession the landlord suffered a loss. I find the tenant is responsible for the cost, as this cost would not have occurred, if the tenant vacated prior to the bailiffs attending. Therefore, I grant the landlord the cost of the bailiff fees in the total amount of **\$2,534.61**.

In this case, the tenant had paid rent for December 2020. While I accept the tenant was removed by the bailiffs on December 1, 2020; however, that does not mean they are entitled to the return of the rent or a credit. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the Act.

As I found the tenant breached the Act, when they failed to comply with the order of possession and the landlord was unable to mitigate the loss because they had no knowledge when the bailiff were attending to enforce the writ of possession, which was on December 1, 2020, I find it is reasonable that the landlord is entitled to keep the December 2020, rent as this puts the landlord in the same position had the tenant not breached the Act. Therefore, I find the landlord is entitled to keep the rent paid for December 2020.

I am not satisfied that the landlord is entitled to the cost of painting. The Residential Tenancy Policy Guideline 40 defines the useful life of building elements. If the tenant damaged an item, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement.

I have determined based on the guideline that the paint had a useful life span of five years. The paint was over five years old at the time of replacement. I find the paint had fully depreciated. Therefore, even if I had found a breach of the Act by the tenant that the landlord would not be entitled to the cost of paint as it was past the useful life span. I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$2,634.61** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$350.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,284.61**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 23, 2021

Residential Tenancy Branch