



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPRM-DR, OPR-DR, FFL, MNDCL, MNDL**

Introduction

This hearing, reconvened from an *ex parte* Direct Request proceeding, dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) 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 pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the landlord testified that they were not making any recordings.

The landlord testified that they served the tenant with the interim decision, notice of reconvened hearing, evidence and amendment to their application in person on January 10, 2021 in the presence of a witness. Based on the evidence I find that the tenant duly served with the landlord's materials on January 10, 2021, in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord testified that the tenant has vacated the rental unit and withdrew the portion of their application seeking an order of possession.

Issue(s) to be Decided

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

The landlord provided undisputed evidence regarding the following facts. This fixed-term tenancy began in August, 2020. The monthly rent was \$6,500.00 payable on the first of each month. A security deposit of \$3,250.00 was collected at the start of the tenancy and is still held by the landlord.

The tenant failed to pay rent for the months of December 2020 and January 2021 and vacated the rental unit without notice sometime in January. The landlord submits that there is a rental arrear of \$13,000.00 for this tenancy.

The tenant did not participate in a move-out inspection of the suite and the landlord submits that some cleaning, maintenance and work was required after the tenancy ended. The landlord submitted some invoices for the work that was performed and seeks an award of \$2,022.75 for their losses.

The landlord submits that the signed tenancy agreement provides a clause wherein the tenant is obligated to cover the costs of the loss of rental income and cost of commission for their agent should the tenant terminate the tenancy before its full term. The landlord submits that they were unable to find a new occupant for the suite until March 2021 and incurred rental income loss of \$6,500.00 for the month of February and they incurred costs of \$6,500.00 for commission to their agent.

The landlord submits that the tenant failed to pay utilities for the rental unit and they incurred a cost of \$578.40 to the utility provider due to the tenant's failure to pay the bills owing.

Analysis

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 accept the undisputed evidence of the landlord that there was an enforceable tenancy agreement wherein the tenant was obligated to pay rent in the amount of \$6,500.00 on the first of each month. I accept that the tenant failed to pay rent for December 2020 and January 2021 and there is a rental arrear of \$13,000.00 as at the date of the hearing.

I accept that the signed tenancy agreement provides that the tenant is obligated to pay the cost of commission to the landlord's agent for finding a new occupant and for any loss of rental income. I find that the tenant is therefore liable to pay the amount of \$13,000.00 for the loss of rent for the month of February and the commission paid to the landlord's agent.

I accept the evidence of the landlord by way of their testimony and some invoices submitted that they needed to perform some work on the rental unit and that the cost of the work was \$2,022.75. I find the description of the work in the invoices to be proportional and reasonable to restore the rental unit to its pre-tenancy condition. I issue a monetary award in this amount accordingly.

I find that in accordance with the signed tenancy agreement the tenant was responsible for paying their own utilities for the rental unit. I find that the tenant failed to pay utilities to the third party companies and consequently the landlord incurred losses when they needed to pay the utility fees. I therefore find that the landlord is entitled to a monetary award in the amount of \$578.40 for the unpaid utilities.

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 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 \$25,451.15, allowing for recovery of unpaid rent, damages, losses and the filing fees and to retain the security deposit for this tenancy. 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: April 1, 2021

Residential Tenancy Branch