



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, MNDL, MNDCL, FFL

Introduction

This hearing was convened by way of conference call concerning an amended application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities; a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application. The landlord's application was made by way of the Direct Request process, which was adjourned to this participatory hearing.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

During the course of the hearing the landlord withdrew the application for an Order of Possession, and I dismiss that portion of the landlord's application.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act*,

regulation or tenancy agreement, and more specifically for Court fees and Court Bailiff fees?

Background and Evidence

The landlord testified that this fixed-term tenancy began on May 1, 2019 and reverted to a month-to-month tenancy after April 30, 2020. The tenancy ended with Court Bailiff involvement on May 10, 2021. Rent in the amount of \$2,400.00 was payable on the 1st day of each month, and the parties agreed that the tenant would pay an additional \$300.00 per month for utilities. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,200.00 as well as a pet damage deposit in the amount of \$1,200.00, both of which are still held in trust by the landlord. The rental unit consists of the main upper floors of a house with a basement suite that is rented to another tenant; the landlord does not reside on the rental property. A copy of the tenancy agreement and Addendum have been provided for this hearing.

The landlord further testified that the tenant is in arrears of rent and utilities the sum of \$8,100.00, being \$2,700.00 for September and \$2,700.00 for October and a pro-rated amount for November, 2021 of \$900.00 to the date the tenant vacated.

The landlord had made an application for an Order of Possession ending the tenancy earlier than a notice to end the tenancy would be effective. The landlord has also provided a copy of an Order of Possession dated October 7, 2021. A Review Consideration Decision dated October 16, 2021 was also made, which dismisses the tenant's application for a Review Hearing. That Decision also confirms the Decision and Order made on October 7, 2021. That Decision did not deal with the unpaid rent.

The landlord testified that a move-in condition inspection report was completed at the beginning of the tenancy, and a copy has been provided for this hearing. However, the tenant left the rental unit with damages and unclean at the end of the tenancy. The landlord did not complete a move-out condition inspection report with the tenant because the tenant had to be removed by a Court Bailiff. The landlord gave the tenant 2 opportunities to schedule a move-out condition inspection report, both by email, but did not use a specific form. The move-out portion has been provided for this hearing, but does not contain a date that it was completed. Numerous photographs have also been provided.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totalling \$16,708.85:

- \$6,131.02 for enforcement of the Writ of Possession;
- \$120.00 for recovery of the filing fee to obtain a Writ of Possession;
- \$700.88 for cleaning services;
- \$546.00 for carpet cleaning and stain removal;
- \$1,470.00 for junk removal;
- \$1,009.69 to replace a ceramic cooktop;
- \$130.00 for installation of the new cooktop;
- \$145.80 to replace a missing vanity mirror;
- \$700.00 for painting and repairing walls and doors due to damage;
- \$61.38 for paint and repair to an exterior door;
- \$259.52 for replacing a broken toilet and faucet;
- \$2,500.00 for an insurance deductible due to fire damage;
- (\$1,165.44) credit for utility bills;
- \$2,700.00 for rent owing for September, 2021;
- \$2,700.00 for rent owing for October, 2021;
- \$900.00 for use and occupancy for November, 2021;
- (\$2,400.00) credit for the security deposit and pet damage deposit;
- \$100.00 for a filing fee from the previous hearing, which has not yet been paid by the tenant; and
- \$100.00 for the filing fee for this hearing.

Copies of receipts have also been provided for this hearing.

The tenant testified that the landlord refused to accept rent.

The tenant painted the stairwells, walls and trim during the tenancy because the tenant wanted to keep up with the upkeep of the house.

At the hearing on October 7, 2021 the parties were asked about settlement, and the tenant told the landlord that rent would be paid to February, 2022 so the tenant could try to find a place to live, but didn't dispute the notice to end the tenancy. The tenant was intimidated by the landlord yelling at the tenant and the tenant's kids.

The landlord had this completely planned out. The landlord denied rent for September, 2021 and gave another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and tried to enter the rental unit again for a walk-through. The Residential Tenancy Branch said that the landlord wasn't to go in due to a pending hearing. However, the landlord stopped the tenant's garbage pick-up, only putting out garbage of the other tenant in the

rental home. The landlord had told the tenant that he intended to renovate, and evidence of that has been provided for this hearing. The landlord also intended to sell

The landlord also filed the application for the October 7, 2021 hearing as an emergency due to the fire, but the landlord had the outside water turned off, and the tenant could not put out the fire.

The Bailiffs caused damage to the tenant's televisions, and jewelry was stolen, so the movers obviously caused some of the damage.

The tenant was homeless, and didn't have an address to give to the landlord.

Analysis

Firstly, the tenant does not deny the claim for unpaid rent, but testified that at least some of that was offered to the landlord who refused it. I cannot change the Decision made on October 7, 2021 wherein an Order of Possession was granted, and I find that the landlord has established a claim of **\$6,300.00** for unpaid rent.

The landlord's Monetary Order Worksheet credits the amount of utilities owed in favour of the tenant for \$1,165.44, and therefore, I find that no utilities are outstanding payable by the tenant.

I have also reviewed the receipts for filing the Order of Possession and the Court Bailiff bill, in the amounts of **\$6,131.02** and **\$120.00** respectively, and I am satisfied that the landlord has established those claims.

I have also reviewed the move-in condition inspection report and photographs provided by the landlord, and find that the damages claimed by the landlord and the receipts in support satisfy the following claims for a total of **\$5,023.27**:

- \$700.88 for cleaning services;
- \$546.00 for carpet cleaning and stain removal;
- \$1,470.00 for junk removal;
- \$1,009.69 to replace a ceramic cooktop;
- \$130.00 for installation of the new cooktop;
- \$145.80 to replace a missing vanity mirror;
- \$700.00 for painting and repairing walls and doors due to damage;
- \$61.38 for paint and repair to an exterior door; and
- \$259.52 for replacing a broken toilet and faucet.

I am also satisfied that the landlord has established that at the very least some of the cleaning, carpet cleaning, junk removal and wall damage were caused by the tenant's pet.

The landlord has not provided any testimony or evidence with respect to how the fire started. Generally, accidents are normal, and I find that the landlord has failed to establish that the insurance deductible was a result of the tenant's failure to comply with the *Act* or the tenancy agreement, and I dismiss that \$2,500.00 claim.

Since the landlord has been partially successful with the application the landlord is entitled to recovery of the **\$100.00** filing fee from the tenant. The second filing fee applied for by the landlord was granted to the landlord in the previous hearing.

I order the landlord to keep the \$1,200.00 security deposit and the \$1,200.00 pet damage deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord as against the tenant for the difference in the amount of **\$15,274.29**.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed, as withdrawn by the landlord.

I hereby order the landlord to keep the \$1,200.00 security deposit and the \$1,200.00 pet damage deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$15,274.29**.

This order is final and binding and may be enforced.

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: February 18, 2022

Residential Tenancy Branch