



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order for compensation under s. 67 for damages caused by the Tenant to the rental unit or residential property; and
- An order for the return of their filing fee pursuant to s. 72.

A.R. and C.D. appeared as agents for the Landlord. The Tenant did not attend, nor did someone appear on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agents advise that the Tenant was served with the Notice of Dispute Resolution and their evidence by way of personal service on September 24, 2021. An affidavit of service provided by the Landlord indicates that C.D. personally served the Landlord’s application materials on the Tenant on September 24, 2021, a point that was confirmed by C.D. at the hearing. I find that the Landlord has served the Tenant with their application materials in accordance with s. 89 of the *Act* and was received by the Tenant on September 24, 2021.

Preliminary Issue – Landlord’s Application

The Landlord’s claim, though pled as compensation for damages to the rental unit, is largely related to claims for compensation for monetary losses following the Landlord’s enforcement of an order for possession by use of bailiff.

I note that Rule 2.2 of the Rules of Procedure limits claims to what is stated in the application. The rule is intended to ensure a fair process by allowing respondents to know the case against them and limiting claims to what is pled.

I accept that the Landlord likely was unaware of the distinction between the different types of claims that can be advanced under s. 67 of the *Act*. I further note that though the Landlord claims for damage to the rental unit, the description of the claim in the application clearly sets out that it is related to bailiff fees and moving fees, stating the following:

BAILIFF FEE, MOVER FEES, LOCKSMITH FEES, STORAGE FEES,
RESTORATION AND REPAIRS. TENANT WAS ISSUED A POSSESSION
ORDER AND DID NOT VACATE. BAILIFF WAS NEEDED TO REMOVE THE
TENANT. UNIT WAS DAMAGED, NEEDED TO BE CLEANED

I find that the Tenant had clear notice of what the Landlord was seeking based on the description of their claim in the application. The Tenant knew the case against them related to bailiff costs, moving costs, and cleaning costs. Accordingly, I do not find that the way the Landlord pled their claim is material with respect to these aspects, being bailiff costs, moving costs, and cleaning costs. It does not prejudice the Tenant to proceed with respect to these aspects.

Issues to be Decided

- 1) Is the Landlord entitled to monetary compensation?
- 2) Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on December 19, 2019.
- At the end of the tenancy, rent of \$1,223.00 was due on the first day of each month.

A copy of the written tenancy agreement was put into evidence by the Landlord.

The Landlord's agents advised that the Landlord obtained an order for possession and an order for unpaid rent following the issuing of a 10-Day Notice to End Tenancy. A copy of the decision and orders made by the Residential Tenancy Branch on May 25, 2021 were put into evidence by the Landlord. The order for possession lists that it was effective on May 31, 2021. The Landlord's agent advised that the security deposit was retained by the Landlord in partial satisfaction of the monetary order made on May 25, 2021, which was directed by the arbitrator as per their decision.

The Landlord's agents indicate that the Tenant did not comply with the order for possession, which required the Landlord to obtain a writ of possession and retain a bailiff to attend the rental unit to remove the Tenant and her belongings. Though no copy of the writ of possession is in evidence, a receipt of possession of the rental unit put together by the bailiff was provided to me. It indicates that the Landlord obtained vacant possession from the bailiff on June 14, 2021 and the writ of possession was obtained on June 9, 2021. The Landlord's agent confirmed that the Tenant vacated the rental unit on June 14, 2021.

The Landlord provides a copy of the bailiff invoiced dated June 16, 2021 indicating a cost of \$5,109.55. The Landlord provides an additional invoice from the bailiff dated July 28, 2021 in the amount of \$1,062.78, which relates to storage costs and the removal of items that were not claimed by the Tenant.

The Landlord's agents indicate that the bailiffs had a discussion with the Tenant with respect to belongings that were to be moved on June 14, 2021. Though certain items were moved by the bailiffs, there were additional items left behind at the rental unit after June 14, 2021. The Landlord's agents advise that the rental unit was a relatively large townhouse such that cleaning and disposing of the items left behind took longer. The Landlord retained a cleaning company to remove the additional items and clean the rental unit, with the total cost of these being \$1,920.45. The Landlord's agent indicates

that the community in which the rental unit is located has limited options with respect to cleaning companies.

The Landlord also seeks partial rent for the month of June 2021. The Landlord's monetary order worksheet lists their claim as \$570.73, which the Landlord's agents indicate was prorated rent until June 14, 2021.

Two additional claims are made with respect to the registered mail package for the previous arbitration hearing, which is in the amount of \$11.36, and the cost of registering the monetary order with the provincial court, which was for \$71.00. Copies of these receipts were put into evidence by the Landlord.

Analysis

The Landlord advances a monetary claim for payment of enforcement of an order for possession and subsequent moving costs.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

With respect to the bailiff fees, I accept the undisputed evidence of the Landlord that they incurred costs in the amount listed in the invoices, being \$5,109.55 and \$1,062.78. I find that these expenses result from the Tenant's failure to pay rent under the tenancy agreement, the breach of their obligation under s. 26 of the *Act* to pay rent when it is due, their failure to comply with the order for possession, which took effect on May 31, 2021, and their failure to retrieve their belongings from the bailiff. I note that the rental unit is in a smaller community and that the cost for the bailiff was adversely impacted by

the travel to and from that community. I find that the Landlord could not have mitigated their damages under the circumstances.

I find that the Landlord has established their claim with respect to the bailiffs in the amount of \$6,172.33.

I further accept the Landlord's evidence that the rental unit was vacated with items that needed to be removed, disposed of, and the rental unit cleaned. I have reviewed the cleaning invoice and, though expensive, corresponds to the expense one would expect of disposing of items and cleaning a rental unit of the size described by the Landlord. I further accept that, given the community's size, there are limited options with respect to alternate cleaning companies. I find that the Tenant breached their obligation to return the rental unit to the Landlord in a reasonably clean state as required by s. 37 of the *Act*. I further find that this breach resulted in a loss to the Landlord in the amount set out in the invoice provided. The Landlord could not have mitigated their damages under the circumstances given their limited options with respect to cleaning services.

I find that the Landlord has established their claim with respect to the cleaning of the rental unit in the amount of \$1,920.45.

The Landlord also seeks compensation related to rent that was not paid for the partial month of June 2021. In the preliminary issue section of this decision, I found that the way the Landlord pled their claim was not material as it related to the bailiff and cleaning costs. Though improperly pled, the description in the application made it clear what the Landlord was claiming for. However, I cannot make a similar finding with respect to the partial month's rent.

Rule 2.2 of the Rules of Procedure is clear that a claim is limited to what is stated in the application. Nowhere in the application does it mention that the Landlord sought compensation in lieu of rent for June 2021. I accept that this is made clear in the Landlord's monetary order worksheet. However, the monetary order worksheet is not the application and forms part of the evidentiary record to support the claim. It should be noted that the amount claimed in the Landlord's application does not correspond to the amount listed in the monetary order worksheet. I make this point because it is not uncommon to have varying amounts listed in monetary order worksheets, which is why Rule 2.2 limits applicants to claiming what is listed in their application unless their application is amended. That did not occur here, nor did the Landlord ask that I amend their application at the hearing.

I am unwilling to look to the Landlord's evidence to correct their application such that it would support the claim they advanced at the hearing. Such a strained approach would render Rule 2.2 meaningless and, most importantly, would run afoul the intention of the Rule, which is to ensure that the respondent knows the case against them. I find that the Landlord's claim for compensation in lieu of rent was not properly put before me and make no orders with respect to this aspect of the Landlord's submissions made at the hearing. I make no findings with respect to the substantive aspects of the Landlord's submissions for compensation for unpaid rent.

Similarly, the Landlord's claims for the court filing fee and the registered mail cost were not properly pled and run afoul Rule 2.2 of the Rules of Procedure. As they were not properly put before me, I make no orders with respect to these amounts. I make no findings with respect to these aspects of the claim advanced by the Landlord at the hearing through their submissions.

Taking the above into account, I find that the Landlord has established a total monetary claim of \$8,092.78.

Conclusion

I find that the Landlord has made out a monetary claim in the amount of \$8,092.78.

The Landlord advanced three claims at the hearing that were not stated in the application, being a claim for compensation in lieu of rent, registered mail costs, and a court filing fee cost. This runs afoul Rule 2.2 of the Rules of Procedure. As the Landlord's claim was not pled to include these aspects of the claim as advanced at the hearing, it was not properly before me. I make no orders with respect to these amounts. I make no findings with respect to these aspects of the claim advanced by the Landlord at the hearing through their submissions.

As the Landlord was largely successful in their application, I find that they are entitled to the return of their filing fee. I order pursuant to s. 72(1) of the *Act* that the Tenant pay the Landlord's \$100.00 filing fee.

Pursuant to s. 67 of the *Act*, I order that the Tenant pay **\$8,192.78** to the Landlord, which represents the total of the amounts listed above (\$8,092.78 + \$100.00).

It is the Landlord's obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with 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: May 09, 2022

Residential Tenancy Branch