



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, ET, MNDCL, OPC**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- an early end to this tenancy and an Order of Possession pursuant to section 56;
- a monetary order for damages and loss pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The personal landlord confirmed that they also represented the corporate landlord. The tenant was assisted by an advocate. Other advocates called in to listen to the hearing for training purposes, and while I have noted their attendance they did not participate in the hearing.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The tenant confirmed receipt of the landlord's application, amendment and all evidence. Based on the undisputed testimony I find the tenant duly served with the complete materials in accordance with sections 88 and 89 of the *Act*.

The tenant testified that they served the landlord with their evidence by registered mail sent on June 30, 2022. The landlord disputed they were served with the tenant's materials. The tenant provided a valid tracking number as evidence of service and the tracking information shows that the materials have been available to be picked up from the post office as of July 4, 2022. Pursuant to sections 88 and 90 of the *Act* I find the landlord deemed served with the tenant's materials on July 5, 2022, five days after mailing. In accordance with Residential Tenancy Policy Guideline 12 the failure of a party to pick up registered mail does not override the deeming provisions of the *Act*.

At the outset of the hearing the parties confirmed that this tenancy has ended with the tenant vacating the rental unit. The landlord withdrew the portions of their claim seeking an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in June 2021. The monthly rent is \$1,450.00 payable on the first of each month. The rental unit is a suite in a detached house with the landlord occupying the balance of the property. A security deposit of \$1,450.00 was initially collected at the start of the tenancy. No condition inspection report was prepared at any time for this tenancy.

The landlord gave lengthy testimony complaining about the behaviour of the tenant and claiming that the rental unit suffered considerable damage attributable to the tenancy. The landlord seeks a monetary award in the amount of \$24,434.00. The landlord submitted a Monetary Order Worksheet which includes claims such damage to appliances, "harassment and fright loss income" of \$10,000.00, insurance deductible of \$2,500.00, a future insurance increase of \$10,000.00 and \$1,000.00 for "move out office".

In their application the landlord accuses the tenant of deliberately damaging the rental property over the course of the tenancy. The landlord further submits that they believe

the tenant's conduct was harassment which caused their income to drop significantly and were forced to vacate the rental property. The landlord also claims for unpaid utilities.

The landlord submitted into documentary evidence numerous photographs and videos of the suite, correspondence between the parties and some letters from their insurers. The landlord gave lengthy testimony occupying most of the hearing time making accusations about the tenant's character, their behaviour and the losses they have suffered as a result.

Analysis

Residential Tenancy Rule of Procedure 6.6 places the evidentiary onus to establish their claim on a balance of probabilities with the applicant.

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.

In the present case I find the landlord has failed to establish any portion of their claim on a balance of probabilities. I find the landlord's evidence consists of subjective complaints, accusations and hyperbolic claims that are not supported in their documentary materials. The landlord gave rambling testimony which was often inconsistent with their own earlier statements which I found to be of little probative assistance. The landlord would often fail to respond to simple questions I posed regarding the background facts such as whether a condition inspection report had been prepared in accordance with the *Act*, launching into other submissions instead of answering the question.

I find little evidence to support the landlord's claim that the tenant caused any damage to the rental property. I find the photographs and letters from insurance adjusters regarding the presence of damage to be insufficient to find that any of the issues are attributable to the tenancy. Given the absence of a proper condition inspection report

prepared in accordance with the *Act* and regulations I find insufficient evidence of the state of the rental unit at the start of the tenancy and to find that any deficiency is a result of the tenant.

Similarly, I find insufficient evidence in support of the landlord's claim for loss of income or moving. I find the landlord's submission to be more in the nature of baseless complaints and accusations which are not supported in the evidence. The copies of correspondence and communications between the parties submitted in the landlord's own evidence shows that the landlord is often the instigator of any disagreement, stating unequivocally that they do not care about the provisions of the *Act* requiring a landlord to repair and maintain or prohibiting rent increases beyond the statutory amount.

Taken in its entirety I find the landlord has failed to establish any portion of their application on a balance of probabilities. I am unable to find that there has been any breach on the part of the tenant that would give rise to a basis for a monetary award. I also note that there is little evidence in support of the amounts claimed by the landlord in any event.

Accordingly, I dismiss the landlord's application in its entirety without leave to reapply.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

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: July 21, 2022

Residential Tenancy Branch