



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OLC, FFT
 OPC, OPN, MNDL, MNDCL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants (Tenants' Application) under the *Residential Tenancy Act* (the Act) on November 7, 2022, seeking:

- An order for the Landlord to comply with the Act, regulations, or tenancy agreement; and
- Recovery of the filing fee.

This hearing also dealt with a cross-application filed by the Landlord (Landlord's Application) under the Act on December 14, 2022, seeking:

- Enforcement of a One Month Notice to End Tenancy for Cause (One Month Notice);
- An Order of Possession because the Tenants gave written notice to end the tenancy;
- Compensation for damage caused by the Tenants, their pets, or their guests to the unit, site, or property;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. on March 17, 2023, and was attended by the agent for the Landlord C.M. (Agent), who provided affirmed testimony. The Tenants did not attend. As the Landlord was present and prepared to proceed, the hearing proceeded based on the Landlord's Application. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The Agent was advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or

exclusion from the proceedings. The Agent was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) state that respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As the Tenants did not attend the hearing, I confirmed service of these documents as follows. The Agent testified that on December 17, 2022, the Notice of Dispute Resolution Proceeding, which contains the Application and the Notice of Hearing, was sent to the Tenants by registered mail at the rental unit address. The Agent provided me with the registered mail receipt and registered mail slips, which include tracking numbers. Although the Agent stated that the registered mail packages (one for each Tenant) went unclaimed, I am satisfied based on the Agent's affirmed and undisputed testimony and the completed registered mail slips, that the packages were sent to the rental unit address and that the Tenants were still residing in the rental unit at that time. As a result, I find that they were deemed served on December 22, 2022, pursuant to section 90(a) of the Act and Policy Guideline #12.

Residential Tenancy Branch (Branch) records show that the NODRP was emailed to the Landlord on December 16, 2022, to be given or sent not later than December 19, 2022. As I am satisfied as set out above that the NODRP was sent to each of the Tenants by registered mail at the rental unit address on December 17, 2022, I therefore find that the Landlord complied with section 59(3) of the Act and rule 3.1 of the Rules of Procedure. I verified that the hearing information contained in the NODRP was correct and note that the Agent was able to attend the hearing on time using this information. As a result, the hearing of the Landlord's Application proceeded as scheduled pursuant to rules 7.1 and 7.3 of the Rules of Procedure, despite the absence of the Tenants or an agent acting on their behalf. Although the teleconference remained open for the 27-minute duration of the hearing, no one attended on behalf of the Tenants.

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

Preliminary Matters

The Agent stated that the Tenants vacated the rental unit on or about January 28, 2023, and as a result, the Landlord no longer requires an Order of Possession. As a result, the hearing proceeded based only on the Landlords monetary claims.

As the Tenants did not appear at the hearing to proceed with their Application or to present any evidence or testimony for consideration, the Tenants' Application is dismissed without leave to reapply pursuant to rule 7.3 of the Rules of Procedure.

The Agent stated that the documentary evidence before me was served on the Tenants by registered mail and by placing it in the mailbox for the rental unit. The Agent also stated that the Tenant C.M.C. acknowledged receipt and confirmed that the digital evidence (a USB) was accessible to them. As a result, and as there is no evidence before me to the contrary, I accept that the documentary evidence before me from the Landlord was served as set out above and I accept it for consideration.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage caused by the Tenants, their pets, or their guests to the unit, site, or property?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Agent stated that the Tenant V.T. has repeatedly caused damage to the property in which the rental unit is located, such as destroying holiday displays and posted signage. The Agent pointed to the large number of security camera videos and photographs before me in support of this testimony. The Agent stated that in total, the Tenants have cause at least \$200.00 in damage, and sought recovery of this amount. The Agent also sought authorization to withhold any amounts owed from the \$1,035.00 in deposits currently held in trust by the Landlord (a \$635.00 security deposit and a \$400.00 pet damage deposit), as the Tenants failed to provide a forwarding address at the end of the tenancy.

Analysis

Based on the documentary evidence and affirmed testimony before me, including but not limited to numerous security camera videos and photographs, I am satisfied that the Tenant V.T. caused intentional damage to the residential property in which the rental unit is located, including but not limited to posted signage and decorations. I also accept the Agent's affirmed and undisputed testimony that the amount of the damage caused is not less than \$200.00. Pursuant to sections 7, 32, and 67 of the Act, I therefore grant the Landlord recovery of this amount. As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

The Agent stated that the Landlord currently holds \$1,035.00 in deposits in trust, as the Tenants did not provide a forwarding address in writing at the end of the tenancy. I accept this as fact and find that section 38(1) of the Act has therefore not been triggered. As per the Agent's request, I grant the Landlord authorization to withhold the \$300.00 awarded from the \$1,035.00 in deposits held in trust, pursuant to section 72(2)(b) of the Act. The remaining \$735.00 balance of the deposits must be dealt with in accordance with the Act.

Conclusion

The Tenants' Application is dismissed without leave to reapply. Pursuant to section 72(2)(b) of the Act, the Landlord is permitted to retain \$300.00 from the Tenants' deposits for recovery of the filing fee and as compensation for damage as set out above.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: March 17, 2023

Residential Tenancy Branch