

## **DECISION**

### **Dispute Codes**

Tenant's file: CNR, MNDCT, FFT

Landlord's file: OPR-DR, MNR-DR, FFL

### **Introduction**

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenant's application pursuant to the Act is for:

- Cancellation of a 10-Day Notice to end tenancy for Unpaid Rent or Utilities pursuant to section 46;
- A monetary order for compensation for damage or loss under the act, residential tenancy regulation (regulation) or tenancy agreement, pursuant to section 67; and
- An authorization to recover the filing fee for this application, under section 72

The landlord's application pursuant to the Act is for:

- An order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55;
- A monetary order for unpaid rent, pursuant to section 26; and
- An authorization to recover the filing fee for this application, under section 72

### **Issue(s) to be Decided**

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to compensation for unpaid rent?

Is the tenant entitled to compensation for damage or loss?

Is either party entitled to recover their filing fee?

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

- The tenant acknowledged service of the Proceeding Package. I find that the tenant was served in accordance with section 89(1) of the Act
- The landlord's representative acknowledged service of the Proceeding Package. I find that the landlord was served in accordance with section 89(1) of the Act

Service of the Evidence

- The tenant acknowledged service of the evidence. I find that the landlord's evidence was served to the tenant in accordance with section 88 of the Act
- The landlord's representative stated that they never received the evidence from the tenant. The landlord stated that they never agreed to service by email or USB stick – the methods used by the tenant; they did not see the emails nor did they utilize the USB due to a risk of viruses or malware. In absence of a Substituted Service decision indicating otherwise, I find that the tenant's evidence was not served to the landlord in accordance with section 88 of the Act. Evidence submitted by the tenant is not considered in this decision

Background and Evidence

This tenancy began at a different residential unit across the street from the current rental unit on March 28, 2021, with a monthly rent of \$1,580.00 due on the first day of each month. A security deposit of \$790.00 and a pet deposit of \$790.00 were paid on March 25, 2021, for a total of \$1,580.00 in deposits.

Due to issues related to mold and age of the home, as well as other factors, the original rental unit became unsuitable for accommodation or restoration. The parties mutually agreed to transfer this tenancy to the current rental unit located across the street. The security and pet deposits were carried over, but the tenancy agreement was amended to \$1,450.00 per month.

The tenant argues that the situation at the previous rental unit resulted in damages and losses, and is claiming up to 12 month's worth of rent in the sum of \$17,400.00 against the landlord. Specifically, the tenant claims they were not notified of the actual condition of the original rental unit and, they did not get enough time to move

their belongings to the new rental unit before the previous rental unit was boarded up. The tenant states that they received access to the new rental unit on May 1, 2022, and that the previous rental unit was boarded up on May 4, 2022.

The landlord's representative stated that the keys to the new rental unit were provided sometime in April 2022 and that the previous rental unit needed to be promptly boarded up due to squatters and security reasons.

Although there was disagreement on the signing of the settlement document itself, both parties acknowledged that \$1,800.00 was provided by the landlord to the tenant in credit towards rent for September and October 2022 for loss of furniture resulting from the circumstances at the previous rental unit.

All parties agree that for July 2023, and now August 2023, rent was not paid. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on July 3, 2023 seeking \$1,450.00 in unpaid rent, with a move-out date of July 18, 2023. The tenant acknowledges receiving this notice and confirms that they did not pay the missing rent within 5 days of receiving that notice. As of the date of this hearing, the rent remains unpaid.

All parties acknowledge that the tenant vacated the rental unit on August 31, 2023, providing the keys to the downstairs tenants as per the landlord representative's request – as they were out of the country at that time.

### Analysis

#### **Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?**

This is moot as the tenant has already vacated the rental unit on August 31, 2023.

For that reason, the tenant's application for the cancellation of the 10 Day Notice as well as the landlord's application for an order of possession are both dismissed without leave to reapply.

#### **Is the landlord entitled to compensation for unpaid rent?**

The amount of unpaid rent for July and August 2023 is \$2,900.00 and is undisputed by the tenant. The landlord currently holds \$1,580.00 in the security and pet deposits from the tenant – both parties agreed that this amount can be applied to the outstanding rent. I will also credit interest incurred on the deposits which total \$22.27 as of the date of this decision. The landlord is entitled to a Monetary Order for the remaining amount which is \$1,297.73 in missing rent.

**Is the tenant entitled to compensation for damage or loss?**

The burden of proof is high for the tenant to prove entitlement for damages beyond the \$1,800.00 already provided by the landlord towards the furniture resulting from the circumstances at the previous rental unit.

As per Part C of Policy Guideline #16, the tenant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Even if the landlord breached the Act by failing to provide a rental unit that met health and safety standards, the tenant has not been able to prove the value of their loss from the breach. The tenant's evidence also did not provide enough details on what was damaged. Although the circumstances at the previous rental unit were difficult, I do not find that the tenant meets the burden of proof to demonstrate entitlement to further compensation. Therefore, this claim is dismissed without leave to reapply.

**Is either party entitled to recover their filing fee?**

The landlord is successful in their application. Therefore, they are authorized to recover the filing fee for their application in the amount of \$100.00. This will be applied to the Monetary Order.

As the tenant was unsuccessful in their claims, the tenant's application for authorization to recover the filing fee for this application from the landlord under section 72 of the Act is dismissed, without leave to reapply.

#### Conclusion

I grant the landlord a Monetary Order in the amount of **\$1,397.73** under the following terms:

<b>Monetary Issues</b>	<b>Granted Amount</b>
A Monetary Order for unpaid rent (July and August 2023) under section 55 of the Act	\$2,900.00
Minus deposits (\$790.00 security and \$790.00 pet)	-\$1,580.00
Minus interest on the deposits from March 25, 2021 to September 20, 2023	-\$22.27
Recovery of the filing fee for the landlord	\$100.00
<b>Total Amount</b>	<b>\$1,397.73</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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: September 20, 2023

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Residential Tenancy Branch