



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened in response to applications by the Landlord and the Tenant.

The Landlord's application filed on December 6, 2023, is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For a monetary order for damages to the rental unit;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application filed on November 12, 2023, is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared.

This matter commenced on March 21, 2024 and was adjourned. The interim decision should be read in conjunction with this Decision. On March 21, 2024, I dismissed the Tenant's claim for monetary compensation that related to damages and the only issue for me to determine on the Tenant's application is if they are entitled to the return of the security deposit. On March 21, 2024, I allowed the Landlord to submit further evidence, with receipts to support their claim, due to the reasons within that interim decision.

The Landlord complied with my Order and the Tenant acknowledged service of that evidence at today's hearing.

Issues to be Decided

Is the Landlord entitled to a monetary order for unpaid and damages?

Is the Tenant entitled to the return of their security deposit?

Background and evidence

The tenancy began on February 1, 2020. The rent of \$1,500.00 was payable on the first of each month. A security deposit of \$750.00 and pet damage deposit of \$750.00 (Deposits) were paid. Both parties in their application indicated that the Tenancy ended on December 9, 2021.

The Landlord testified that the Tenant did not pay the rent for December 2021 and was served with a notice to end tenancy and the Tenant was required to vacate by December 12, 2021. The Landlord stated rent for December 2021, was never paid by the Tenant and they seek to recover unpaid rent in the amount of \$1,500.00.

The Landlord testified on that on December 9, 2021, they went to the rental unit for a scheduled inspection, as they had received complaints and to post a Final Notice to Schedule a Move-Out Inspection for December 12, 2021. The Landlord stated that they thought the rental unit had been abandoned by the Tenant as the Tenant had not been responding to their calls or when knocking on the door. The Landlord stated they entered the rental unit and found the Tenant in a comatose state and had to have the Tenant taken by ambulance. The Landlord stated that later in the evening the Tenant returned to the premises to collect some cash and told them that they were moving out and going to a shelter.

The Landlord testified that on December 9, 2021, they found the rental unit in a horrible state as there was alcohol, human and animal urine, feces, vomit and all over the floors. The Landlord stated that they had no choice but to take action because this was causing damage to the flooring. The Landlord stated had they not acted the rental unit would have sustained further damage.

The Landlord testified that the flooring in the master bedroom was saturated with biohazard which penetrated under the floorboards, and they had to remove the flooring, apply a sealant to the floor and then replace the flooring. The Landlord stated they replaced the flooring with carpet as it was more cost effective than having new laminate installed. The landlord seeks to recover the cost of repairing the flooring and labour in the total amount of \$775.54.

The Landlord testified that they had to bring in a professional cleaner and they seek to recover the cost of \$435.00.

The Landlord testified that they had to have the remaining carpets cleaned to remove the urine and feces and seek to recover \$178.50.

The Landlord testified that they had to dispose of the Tenants bed mattress as it was soaked in alcohol, urine and feces and causing damage. The Landlord seeks to recover the cost of \$276.75.

The landlord testified that they seek to recover fuel costs, hydro cost during repairs, and the cost of miscellaneous cleaning supplies and repairs and to paint a wall in the kitchen.

The Tenant testified that on December 9, 2021, the Landlord did call an ambulance for them. The Tenant stated that they do not recall the state of the condition of the rental unit. The Tenant stated that when they returned from the hospital on December 9, 2021 the Landlord had locked them out and would not allow them into the rental unit, which they just wanted to go to sleep.

The Tenant testified that they did not end the tenancy on December 9, 2021, and they were to have until December 16, 2021 to vacate. The Tenant stated that the Landlord breached the Act, when they were locked out and when they failed to give them the opportunity to clean the rental unit. The Tenant indicated that a lot of the receipts provided by the Landlord were dated before the agreed upon vacate date.

The Tenant testified that they could have disposed of their mattress as they had a van.

The Tenant testified that they sent their forwarding address to the Landlord by email in February 2022.

The Landlord argued that they never received the Tenant's forwarding address and email was not a service address for the Landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant did not pay rent for December 2021, as required by their tenancy agreement. The Tenant was served a 10 Day Notice for unpaid rent. I find the Tenant breached section 26 of the Act, when they failed to pay the rent. Therefore, I find the Tenant owes the Landlord **\$1,500.00**.

In this case, the Landlord is claiming for damages, while both parties provided a different version of events on how the tenancy ended, although both parties stated in their application that it ended on December 9, 2021.

I find it more likely than not that on December 9, 2021 when the tenant returned to the rental unit it was for the purposes of obtaining cash and then going to a shelter or friends. I accept the evidence of the Landlord as this has the ring of truth, given that the tenant had earlier been found in a comatose state. Further, the Tenant could not remember at the hearing the state they had left the rental unit, this leads me to believe the Tenant was not aware of their surroundings or even possibly their action on that particular day, which would be reasonable under the circumstance.

Under section 32(2) of the Act states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The evidence clearly supports that the tenant did not maintain reasonable health, cleanliness and sanitary standards, as there was human and animal urine, feces and vomit as well as spilt alcohol throughout the premises. I find the Tenant breached section 32(2) of the Act.

While I accept the Tenant provided a text message dated December 15, 2021; showing they wanted to make arrangement to pick up their belonging and the Landlord indicted that it was not a good day to do , as they were making the necessary repairs. However, there is no evidence provided by the Tenant that they had any communication with the Landlord between December 9 and December 14, 2021, indicating that they were prepared to clean and make the necessary repairs to the rental unit.

Even if the tenancy was to end on December 16, 2021; however, by the Tenants own action the rental unit was in such as state that I find it was reasonable and appropriate for the Landlord to exercise their rights under section 33 of the Act to conduct emergency repairs that were necessary for health and safety reasons and for the preservation of rental property. By the Tenants own testimony when they returned home on December 9, 2021, they just wanted to sleep, not that had any plans to immediately rectify the problem which was causing damage to the premises.

I find the Landlord is entitled to recover the cost of the flooring that was damage by saturated urine, alcohol and feces in the master bedroom and the labour to install. I did not apply a depreciated value, as this was above what would be expected and is not accidental damage. I find the Tenant owes the Landlord \$795.54.

I find the Landlord is entitled to recover cleaning costs, which I find it appropriate that a professional cleaner was used as the premises was contaminated in a way that would not be expected. Therefore, I find the Tenant owes the Landlord \$435.00.

I find the Landlord is entitled to recover carpet cleaning and this would have been the Tenant's responsibility to do under the Act. The Landlord's cost is reasonable. Therefore, I find the Tenant owes the Landlord \$178.50.

I find the Landlord is entitled to recover labour and dump fees for the removal of the unsanitary mattress. Therefore, I find the Tenant owes the Landlord \$276.75.

I have not granted the Landlord the claim for fuel, miscellaneous supplies for cleaning and repairs of the minimal wall painting, as these would be normal expense the Landlord could expect to do at an end of a tenancy. Therefore, I dismiss this portion of the Landlord's claim.

I find that the Landlords have established a total monetary claim of **\$3,285.79** comprised of the above described amount and the \$100.00 fee paid for this application.

I am not satisfied the Tenant served the Landlord with their forwarding address in accordance with the Act. The tenancy agreement provides a service address for the Landlord, which is not an email address for service. Serving by email is only permitted when agreed in writing that email is a permitted method for service of documents. As the Landlords monetary award is greater than the Deposits paid by the Tenant.

I order that the Landlords retain the Deposits of \$1,500.00 in partial satisfaction of the claim and I grant the Landlords an order under section 67 of the Act for the balance due of **\$1,785.79**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **Tenant is cautioned** that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant's application for the return of the Deposits is dismissed as I have authorized the Landlord to keep it. The Tenant is not entitled to recover the cost of the filing fee.

The Landlord is granted a monetary award, the Landlords can keep the Deposits in partial satisfaction of the award. I grant the Landlords a formal order for the balance of their monetary award.

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 10, 2024

Residential Tenancy Branch