



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. Both parties presented a considerable amount of evidence much of which was not relevant to the issues raised in the Application for Dispute Resolution.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the tenant by mailing, by registered mail to the forwarding address provided by the tenant on June 23, 2014.

The Application for Dispute Resolution filed by the landlord lacked the details required by the Rules of Procedure. At the hearing the landlord stated she was seeking the following orders:

1. An Order for Possession
2. A Monetary order as follows:
 - a. \$700 for the cost of mudding/sanding and priming the walls
 - b. \$400 for the cost of carpet cleaning
 - c. \$850 for the cost of unpaid rent

- d. \$250 for the cost of powering washing
 - e. \$800 for the cost to replace the kitchen counter
 - f. \$500 for the cost to repair flooring
3. An order to retain the security deposit
 4. An order for the cost of the filing fee

The tenant stated he was ready to proceed on these matters and did not wish an adjournment.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

On July 26, 2009 the tenant and 4 others entered into a one year fixed term tenancy agreement in writing the provided the tenancy would start on August 1, 2009 and end on July 30, 2010. The fixed term tenancy agreement provided that it would end after the expiry of the fixed term. However, the parties continued in a tenancy relationship for a number of years. The rent was \$3000 per month payable on the first day of each month.

Since that time all of the tenants but the respondent have given notice and vacated the rental unit. In April 2014 the respondent gave the landlord written notice that he was vacating the rental unit on May 31, 2014. The respondent vacated on that date and the tenancy came to an end on May 31, 2014. The rent at the time the tenancy ended was

\$3330 per month payable in advance on the first day of each month. The landlord holds a security deposit/pet damage deposit in the sum of \$1920.

Other people have occupied the rental unit starting June 1, 2014. They have deposited \$3300 in the landlord's account for rent for June, \$2100 being rent for July and no rent has been paid for August. The landlord has engaged in discussion with as to the need to sign a tenancy agreement and whether the residents are renting their room only on an individual basis or the group is renting the entire house. She provided them with a form of tenancy agreement but they have refused to sign it.

Analysis

The tenant testified that in 2010 the tenants and landlord changed their tenancy arrangement from all of the co-tenants renting the entire house and being jointly and severally liable to each of the co-tenants renting individual rooms and being liable for their room only. The tenant referred me to e-mails outlining that a discussion. The landlord disputes the testimony of the tenant. She testified that the parties agreed the tenants would give longer notices but they remained jointly and severally liable. The tenant was not able to produce a copy of the change of agreement. He referred to e-mails to the landlord saying their form of agreement was damaged and asking for the copy of a replacement agreement. The landlord stated she does not have a copy of such an agreement. Neither party was able to produce a copy of the new alleged tenancy agreement.

After carefully considering all of the evidence I determined the tenant failed to prove there was a change to an agreement to rent the rooms on an individual basis. Thus the co-tenants were jointly and severally liable for renting the entire house until they gave notice to the landlord and the landlord accepted each was no longer to be bound. The respondent was the only tenant remaining. In April he gave notice in writing that he was vacating on May 31, 2014. The tenancy came to an end on that date on May 31, 2014.

Analysis - Order of Possession:

The respondent stated he has no objection to the issuance of an Order for Possession as against him and those claiming possession through him. He gave notice and vacated the rental unit effective May 31, 2014. As a result I granted the Order of Possession. This Order for Possession is not effective as against those presently living in the rental unit as they did not gain possession through the respondent.

I determined the tenants presenting living in the renting unit and having paid the rent in full for June and partial rent for July are not sub tenants of the respondent and they have not gained possession through the respondent. One of the fundamental principles of our legal system is that a respondent must have notice of a claim against him and a fair opportunity to respond. The landlord has not given those individuals a Notice to End and they were not a party to this hearing. The landlord must first serve those individuals with Notices and file a claim naming them as respondents in order for an arbitrator to determine it is appropriate for the issuance of an Order for Possession.

Analysis - Monetary Order and Cost of Filing fee

With respect to each of the landlord's monetary claims against the respondent I find as follows:

- a. I determine the landlord is entitled to \$850 for the non-payment of rent for the period April 2013 to November 2013. The landlord testified she served a Notice of Rent Increase on one of the co-tenants. However, the tenants failed to deposit the full rent increase in her account and it took a period of time before she realized this. She further testified the respondent agreed the landlord could take this sum from the security deposit. At the hearing the respondent testified he was uncertain whether one of his co-tenants actually received the Notice of Rent Increase. He did not produce any evidence from that co-tenant. The law provides that service on one co-tenant is sufficient service on all. I determined the Notice of Rent Increase was sufficiently served on the co-tenant and the landlord is entitled to the \$850 claims.

- b. The landlord claimed the sum of \$700 for the cost to mud/sand and prime the walls of the rental unit. Policy Guideline #40 which is titled Useful Life of Building Elements states the life of an interior paint job is 4 years. The tenancy lasted longer than 4 years in this case. As a result I determined the landlord failed to prove the claim for work on the walls was anything more than reasonable wear and tear and reasonable depreciation and as a result I dismissed this claim.
- c. The landlord claimed the sum of \$250 for the cost of power washing. The tenant acknowledged he and the other co-tenants had power washed the deck on a regular basis during the tenancy. The last time they power washed was in the spring of 2013. They had not power washed the deck since that time. I determined the landlord is entitled to the \$250 claimed for the cost of power washing.
- d. The landlord claimed the sum of \$400 for the cost of carpet cleaning including the general cost of cleaning. The landlord produced a receipt dated June 22, 2014 from a carpet cleaning company in the sum of \$372.75 and a receipt from a Venetian Blind service centre company stating the cost to clean 13 blinds was \$191. The tenant testified the carpet was old and needed to be replaced since 2009. Policy Guideline #1 includes the following statements:

“CARPETS

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

INTERNAL WINDOW COVERINGS

“3. The tenant is expected to leave the internal window coverings clean when he or she vacates. The tenant should check with the landlord before cleaning in case there are any special cleaning instructions. The tenant is not responsible for water stains due to inadequate windows.”

After hearing the disputed evidence I determined the landlord has established a claim against the tenant in the sum of \$400 for the cost of cleaning including carpet cleaning, the cleaning of the blinds and general cleaning.

- e. I dismissed the claim of the landlord in the sum of \$800 for the cost of replacing a kitchen cabinet. This work has not been done. The tenant did not live in the area in which the damage allegedly occurred. The landlord failed to prove that the respondent or his co-tenants were negligent or the quantum of loss that allegedly occurred. The landlord failed to prove this is any more than reasonable wear and tear.
- f. I dismissed the landlord's claim of \$500 for the cost of repairing tiles in the basement and the cost of repairing scratches to the floor caused by the legs of a game table. The repair of the floor has not yet taken place. The landlord testified she obtained an oral quotation. The supplier who allegedly made the quote did not attend the hearing or provide evidence of any sort. The landlord failed to prove this claim. Further, the landlord failed to prove the damage was caused by the negligence of the tenant.

In summary I granted the landlord a monetary order in the sum of \$1500 plus the sum of \$50 in respect of the filing fee for a total of \$1550.

Security Deposit

I determined the security deposit/pet damage deposit totals the sum of \$1920. I ordered the landlord may retain the sum of \$1550. I further ordered that the

landlord pay to the respondent the balance of the security deposit/pet damage deposit in the sum of \$370.

It is further Ordered that this sum be paid forthwith. The parties are given a formal Order in the above terms and the respondent must be serve the applicant with a copy of this Order as soon as possible.

Should the applicant fail to comply with this Order, the 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: August 19, 2014

Residential Tenancy Branch

