



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTH PARK MANOR SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Has the landlord established an entitlement to compensation from the tenant for the amounts claimed?

Background and Evidence

The tenancy commenced in January 2011. The tenant was required to pay rent geared to his income on the first day of every month. At the end of the tenancy the tenant's rent obligation was \$471.00 per month. The tenant paid a security deposit but it has already been refunded to the tenant.

The tenancy came to an end pursuant to a 1 Month Notice to End Tenancy for Cause. The tenant disputed the 1 Month Notice and a participatory hearing was held (file number provided on cover page of this decision). The Arbitrator hearing that case upheld the 1 Month Notice. A written decision and Order of Possession were issued by the Arbitrator on June 24, 2016 requiring the tenant to vacate the rental unit by June 30, 2016. The tenant did not vacate the rental unit on June 30, 2016. Rather, the tenant filed an Application for Review Consideration which was dismissed on July 11, 2016.

On July 18, 2016 the landlord secured the services of a court bailiff and applied for a Writ of Possession. Also on July 18, 2016 the tenant applied for and obtained a Stay of Eviction Notice and any Order or Writ of Possession ("stay") to give him the opportunity

to present further evidence to the court in support of a petition for Judicial Review. The “stay” had an expiry date of July 29, 2016. The tenant served the “stay” upon the landlord.

In July 2016 the tenant entered into a tenancy agreement for a new home but he would not be provided possession of his new rental unit until the end of August 2016.

On July 29, 2016 the tenant returned to the court and requested an extension of the “stay”. An extension was granted until September 2, 2016. The tenant served the extension upon the landlord. The tenant did not seek a third extension of the “stay” and did not return possession of the rental unit to the landlord by September 2, 2016. The tenant was of the position that this was acceptable since it was the “long weekend” after September 2, 2016. The tenant remained in possession of the rental unit until September 5, 2016. The tenant participated in the move-out inspection of the unit with the landlord on September 6, 2016.

The tenant paid \$471.00 for each of the months of July 2016 and August 2016 which the landlord accepted for use and occupancy only. The tenant did not pay any monies for the month of September 2016.

As to the status of the Judicial Review, the tenant claims to have filed a petition for Judicial Review but acknowledged that no court date has been set and that he does not intend to pursue it.

Below, I have summarized the landlord’s claims against the tenant and the tenant’s responses.

1. Loss of Rent – September 2016

The landlord submitted that the tenant did not advise the landlord when he would be moving out. Rather, the landlord’s staff person saw the tenant moving out on September 5, 2016. The tenant’s occupation of the rental unit in September 2016 and moving out without any advance notice on September 5, 2016 resulted in the landlord suffering loss of rent. The landlord pointed out that prospective tenants usually have to notice to end their tenancy and cannot move in immediately. The landlord acknowledged that renovations were done in the rental unit after the tenancy ended in September 2016 but the landlord did not re-rent the unit until November 1, 2016. The landlord has absorbed the loss of rent for the month of October 2016.

The tenant submitted that the landlord “should have known” that he would move out since he did not pay rent on September 1, 2016. The tenant acknowledged that he intentionally withheld information about his anticipated move out date from the landlord despite securing a new home in July 2016. The tenant was of the position that it was not pertinent to give the landlord any notice of his intention to move out in early September 2016 since rental units in the building are often vacant for one month between tenancies while the landlord makes repairs or renovations. The tenant stated that he was given possession of his new home on August 25, 2016 but that he could not move out of the rental unit sooner than September 5, 2016 because the elevator would not “lock” which prevented him from hiring movers.

2. Writ of Possession and bailiff costs

The landlord seeks to recover the filing fee paid for the Writ of Possession in the amount of \$120.00 and the minimum charge of \$150.00 plus GST paid to the bailiff. The landlord provided a receipt for the filing fee and an Invoice dated September 6, 2016 from the bailiff showing the landlord was charged \$157.50 including GST. The landlord submitted that \$150.00 is the bailiff’s minimum charge even though the Writ of Possession did not need to be executed.

The tenant was of the position the landlord wasted its own money in applying for a Writ of Possession because the tenant had applied for a “stay” on the same date. The tenant was of the position that he is not responsible for the bailiff fee because the bailiff did not attend the property and serve him with the Writ of Possession. The tenant pointed to the bailiff’s invoice dated September 6, 2016 in an effort to show he moved out before the bailiff arrived.

The landlord responded by stating that on September 5, 2016 the landlord notified the bailiff that the tenant had moved out and execution of the Writ of Possession was no longer required. September 6, 2016 is the date the bailiff issued the Invoice but does not reflect attendance at the property by the bailiff on September 6, 2016.

3. NSF fee

The landlord requested the tenant pay an NSF fee of \$25.00. Under section 7 of the Residential Tenancy Regulations, an administrative fee for a returned cheque may be charged by a landlord if such a term is in the tenancy agreement. I noted that I had not been provided a copy of the tenancy agreement. I informed the parties that without the tenancy agreement, I could not verify that there is a valid term in the tenancy agreement

that provides for an administrative fee for NSF cheques. Therefore, I dismissed this claim summarily and did not seek a response from the tenant.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant 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.

Upon consideration of everything before me, I provide the following findings and reasons.

The tenant was ordered to vacate the rental unit by June 30, 2016 by an Arbitrator, as delegated by the Director. The tenant did not comply with that order. The tenant's subsequent Application for Review Consideration was dismissed. The tenant then filed for a "stay" and an extension of that "stay" on the pre-tense he was going to pursue Judicial Review; however, the tenant did not and has not pursued it. Nor, did the tenant vacate the rental unit by the deadline of the "stay", as extended. Therefore, I find the tenant in breach of what was required of him under the Act and the "stay" provided by the Supreme Court.

I find it likely that the tenant's actions indicative of an intentional and deliberate delay of the complying with the order to vacate the rental unit, especially when he sought the extension of the "stay" on July 29, 2016 when he had secured a new home and then essentially abandoned the request for Judicial Review. A further aggravating factor is that the tenant was not forthcoming with the landlord as to his intentions to move out despite having found another place to live. In contrast, the tenant was certain to put the landlord on notice as to the "stay" he had received, and its extension, but did not notify the landlord that he would be moving out on or about the expiry of the extension. I find the tenant's actions indicative of an intentional delay tactic and retaliation.

As to the tenant's argument that withholding advance notice to be inconsequential since rental units are generally vacant for one month between tenancies, I find his position consistent with the landlord's position and actually supports the landlord's request for the tenant to pay for one month of loss of rent. The rental unit was vacant nearly two months in this case, nearly twice as long as usually, which I attribute to the tenant's deliberate actions.

Considering the tenant had possession of the rental unit in September 2016, the tenant intentionally and deliberately decided not to give the landlord any advance notice of the date he would be vacating the rental unit, and the landlord has absorbed loss of rent for the October 2016 vacancy, I find the landlord's request to hold the tenant responsible to pay for September 2016 loss of Rent to be reasonable in the circumstances. Therefore, I award the landlord \$471.00 as requested.

As for the landlord's request to recover the filing fee for the Writ of Possession and the bailiff's minimum charge from the tenant, I also hold the tenant responsible for these costs for reasons provided below.

The landlord was entitled to apply for a Writ of Possession because the tenant did not comply with the Order of Possession served upon him and the tenant's Application for Review was dismissed. In order to apply for a Writ of Possession, the services of a bailiff must be secured, thus, I find it reasonable that there would be a cost in doing so, even if the Writ of Possession did not need to be executed ultimately.

The tenant argued that the landlord should not have wasted money applying for a Writ of Possession since he had a "stay" in place. However, I find this argument inconsistent with his written submissions. The tenant had submitted that he saw the landlord in the court paying a filing fee and he presumed it was for a Writ of Possession. The tenant further submitted that he informed the judge of this in seeking the "stay" and that the "stay" he received even contemplated that the landlord had filed for and obtained a Writ of Possession. It would appear the landlord applied for the Writ of Possession first; however, the Writ could not be executed by the bailiff due to the "stay" that came into effect shortly thereafter.

The "stay" was granted so that the tenant may apply for Judicial Review; however, it appears that the tenant essentially abandoned that remedy once he found another place to live. Accordingly, I am of the view the "stay" was a mechanism the tenant employed to delay the landlord's enforcement of the Writ of Possession he had applied for and obtained.

In awarding the landlord recovery of the filing fee and bailiff cost, I consider that these costs would have been avoided had the tenant complied with his tenancy agreement and avoided an end of tenancy for cause, as evidenced by the decision issued on June 24, 2016 and complied with the Order of Possession served upon him rather than pursuing an Application for Review that was dismissed; and an application for Judicial Review that was not pursued.

In light of the above, I award the landlord recovery of filing fee paid for the Writ of Possession and the bailiff's minimum charge as requested in the amounts of \$120.00 and \$157.50 respectively.

As the landlord was largely successful in this application, I further award the landlord recovery of the \$100.00 filing fee paid for this application.

In light of all of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

September 2016 loss of rent	\$471.00
Writ of Possession filing fee	120.00
Court bailiff minimum charge	157.50
Filing fee for this application	<u>100.00</u>
Monetary Order	\$848.50

Conclusion

The landlord has been provided a Monetary Order in the amount of \$848.50 to serve and enforce upon the tenant.

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: March 10, 2017

Residential Tenancy Branch