



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE FF MND MNDC MNSD OPC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with applications from both parties:

The landlord applied for:

- an Order of Possession pursuant to section 55 of the *Act* for end of employment;
- a monetary order for damage to the rental unit and for loss under the *Act* or tenancy agreement pursuant to section 67;
- an Order to retain the tenant's security deposit pursuant to section 38; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant applied for:

- cancellation of the landlord's notice to end tenancy pursuant to section 48.

Both the landlord and the tenant appeared at the hearing. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Both parties confirmed receipt of each other's applications for dispute resolution and the tenant confirmed receipt of the landlord's evidentiary packages in person. The tenant stated that he did not submit any evidence to the hearing. Pursuant to section 88 & 89 of the *Act* I find that both parties were duly served with each other's packages for dispute resolution and that the tenant was duly served with the landlord's evidentiary packages.

Following opening remarks, the tenant asked to amend his application for dispute. The tenant explained that he had accidentally indicated on his application that he was disputing a notice to end tenancy for end of employment. He said that this was a typo and that he was in fact disputing a notice to end tenancy for cause. As the landlord would not be prejudiced by this amendment, I am amending the tenant's application for dispute, pursuant to section 64(3)(c) of the *Act*.

Issue(s) to be Decided

Can the tenant cancel the landlord's Notice to End Tenancy for Cause? If not, should an Order of Possession be granted?

Is the landlord entitled to a monetary order for damage to the rental unit?

Can the landlord retain the tenant's security deposit?

Can the landlord recover the filing fee associated with the application?

Background and Evidence

Testimony was presented by both parties that this tenancy began on August 1, 2014. Rent began at \$1,200.00 per month, and has risen to \$1,238.84. A security and pet deposit of \$600.00 each was collected at the outset of the tenancy and continue to be held by the landlord.

The landlord has applied for an Order of Possession and a Monetary Order of \$3,187.12. The landlord did not supply a copy of the Notice to End Tenancy, but the tenant confirmed that he had been served with a Notice to End Tenancy for Cause. The tenant said that he believed the reasons cited on the Notice to End Tenancy were as follows;

- The tenant has damaged the landlord's property;
- The tenant has sublet the rental unit without the landlord's written consent;
- The tenant has breached a material term of the tenancy agreement; and
- The tenant has not done required repairs of damage to the unit/site.

The landlord said he was seeking an Order of Possession because of the continued issues he had with other occupants on the property. The landlord noted that he had no issue with the tenant, but it was the tenant had allowed guests and visitors to live on the property without the landlord's permission. The landlord argued that it was these people who had caused problems on the property. The landlord cited three broken windows as an example of the problems caused by past occupants. The landlord said that the tenant has sublet the home without his permission on numerous occasions, and most recently has allowed two unauthorized persons to live in the home.

The tenant did not dispute the fact that he had taken in two persons to live with him; however, he said that they were not subletters but rather roommates. The tenant said

that the rental agreement signed between the parties allows three people to live on the property. He said that his wife had recently passed away and had taken in these two occupants to assist him with rent payments. He indicated that he was unaware that he needed the landlord's permission to take in roommates because he had signed a tenancy agreement allowing three people to occupy the premises and no more than three people currently occupied the premises. The tenant contended that he had not sublet the rental home because he had remained in the unit and remained in charge of the property and had previously asked other occupants to leave because of illegal activity in which they were engaged.

An examination of the tenancy agreement signed between the parties names the landlord, the tenant and the tenant's wife. The addendum notes, "Any additional person/persons, Landlord must be notified and an additional rental contract to be written up, if Landlord agrees with all the arrangements...this rental agreement is for only 2 adults and 0 children." The tenant argued that this issue had previously been addressed during a past arbitration in December 2016 where it was held by an arbitrator that the tenant did not have an unreasonable number of persons living in the rental property.

In addition to the issues of unauthorized occupants, the landlord said that the tenant had breached a material term of their tenancy agreement – namely, that the yard was to be kept in good appearance, that no garbage or debris was to be left anywhere on the rental property, that the tenancy agreement was for 2 people and that the landlord should be notified of any additional persons living on the property. The landlord testified that this final term of the tenancy agreement was very important to him because he wanted to ensure that all background checks were performed, and he would draw up an additional rental contract to cover any additional tenants he approved.

The landlord explained that he was seeking a Monetary Order as follows:

Item	Amount
Repair for Broken Window	\$588.00
Quote for Replacement of Carpet	1,099.12
Estimate for yard clean up and dump at civic transfer station	1,500.00
Total =	\$3,187.12

The landlord said that in approximately June 2017 the tenant had gotten in to a disagreement with another occupant of the rental premises, and that this other occupant

had promptly broken three windows in the home. The tenant did not dispute this version of events, and acknowledged that attempts were being made to raise funds so that the windows could be replaced.

In addition to the broken windows, the landlord sought a monetary order for the replacement of the carpet in the rental premises. The landlord explained that during the course of the tenancy, the carpet had become very damaged and stained and required replacement. The landlord and the tenant disagreed on the age of the carpet, with the landlord testifying that the carpet was new in 2012. The tenant explained that he had spoken to the former tenants, and these tenants confirmed that the carpet presently in the home was in the house during their tenancy.

The final aspect of the landlord's monetary claim concerns funds that are required to clear the back yard of junk that the landlord said the tenant had acquired during the course of the tenancy. The landlord explained that he had received numerous letters from the City informing him that he needed to remove the debris from his yard as it was deemed unsightly.

The tenant acknowledged that there had been numerous items previously stored on the property but that steps had been taken to remove them. Additionally, the tenant explained that he had spoken to an official with the City who had informed him that there were presently no further complaints or issues with the property.

Analysis – Order of Possession

The landlord has applied for an Order of Possession based on Cause. The tenant applied for a cancellation of this Notice to End Tenancy for End of Employment. While, I have amended the tenant's application to reflect an application to cancel a Notice to End Tenancy for Cause, I find that the landlord has failed to supply the 1 Month Notice on which he is relying. The tenant acknowledged receiving a 1 Month Notice; however, it could not accurately be stated by either party exactly which terms the landlord sought to rely on.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

- (a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

At the time of the scheduled hearing, there was no 1 Month Notice to End Tenancy entered into written evidence. Neither party could accurately describe the exact reasons for its issuance, and I find that it is impossible to determine if the landlord's 1 Month Notice complies with section 52 of the *Act*. This section states:

52 In order to be effective, a notice to end tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The landlord's application for an Order of Possession is dismissed with leave to reapply. I find that this tenancy shall continue until it is ended in accordance with the *Act*.

Analysis – Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove his entitlement to a monetary award.

The landlord said he was seeking a monetary order of \$3,187.12. He explained that this amount included replacement of windows that had been broken during the tenancy by previous occupants that the tenant had allowed on the property, along with a replacement of the carpet, and the cost associated with a clean-up of the back yard. As part of his evidentiary package, the landlord supplied two invoices to the hearing. One

was an estimate for the cost of the carpet, while the other was from a glass company describing the cost of the windows that needed replacing.

During the course of the hearing the tenant acknowledged that the windows had been broken and took full responsibility for the damage that had occurred. He said he was currently attempting to raise money for replacement windows. I find that the landlord has demonstrated that he has suffered a loss, and that this loss stemmed directly from the negligence of the tenant in not controlling occupants he permitted to have in the rental premises. The landlord is therefore entitled to the entire sum of \$588.00 he has requested for the replacement of the windows.

As part of his evidentiary package, the landlord supplied photos purporting to show damage that the tenant had done to the carpet. The parties presented conflicting accounts on the age of the carpet. The landlord said that the carpet was new as of 2012, while the tenant said he had spoken to the previous tenants who occupied the home and he had confirmed that the carpet was the same one these past tenants had previously lived with. I do not find that the landlord is entitled to any amount of monetary compensation for replacement of the carpet. The landlord has failed to supply a copy of the condition inspection report that is to be performed at the start of a tenancy, making it impossible to determine the state of the carpet upon the tenant's occupation of the rental home. The landlord has only submitted two, low quality photos that demonstrate some area of the carpet may be stained. He has not explained what steps have been taken to clean the carpet, or whether or not an entire replacement is necessary. For these reasons, I dismiss the landlord's application for a monetary award for a replacement of the carpet.

The final aspect of the landlord's monetary application concerns the removal of junk from the backyard. The tenant said that many of the items with which the landlord was previously concerned have now been removed. The landlord acknowledged that some cleaning was done by the tenants but that items continued to pile up in the back area. The landlord explained that he estimated it would cost \$1,500.00 to transport and dump these items to the civic transfer station. No invoices, or estimates were supplied to the hearing as part of the landlord's evidentiary package. I find that the landlord has not supplied sufficient detail in his testimony or evidentiary package as to how he arrived at this figure, or which items required removal. The photos submitted to the hearing demonstrate a variety of items, some of which he acknowledges have been removed. For these reasons, I dismiss this aspect of the landlord's monetary application.

As the landlord was partially successful in his application, he may recover the \$100.00 filing fee associated with this application.

Conclusion

The landlord's application for an Order of Possession is dismissed with leave to reapply. This tenancy shall continue until it is ended in accordance with the *Act*.

I issue a Monetary Order of \$650.00 in favour of the landlord as follows:

Item	Amount
Replacement of windows	\$550.00
Return of Filing Fee	100.00
Total =	\$650.00

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: October 25, 2017

Residential Tenancy Branch