



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OMNI CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for compensation for unpaid rent and utilities; damage to the rental unit; damages or loss under the Act, Regulations or tenancy agreement; and, authorization to retain the tenant's security deposit. An agent appeared on behalf of the landlord; however, there was no appearance on part of the tenant. The landlord submitted that the tenant was served with the hearing documents and evidence by registered mail sent on December 1, 2017 and the registered mail was delivered to the tenant on December 19, 2017. The landlord provided a copy of the registered mail receipt, including tracking number, and a Canada Post delivery certificate as proof of service. I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for the amounts claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The one year fixed term tenancy started on September 1, 2017 and was set to expire on August 31, 2018. The landlord collected a security deposit of \$1,750.00 and the tenant was required to pay rent of \$3,500.00 on the first day of every month.

The landlord had filed a previous Application for Dispute Resolution under the Direct Request procedure and on October 24, 2017 the landlord was provided an Order of

Possession and a Monetary Order to recover the filing fee paid for that Application. The tenant filed an Application for Review Consideration of that decision but the Application for Review Consideration was dismissed on November 1, 2017 as it was filed out of time. The landlord filed for and obtained a Writ of Possession which the court bailiff executed on November 3, 2017.

The landlord prepared a move-in and move-out inspection report. The tenant did not participate in the move-out inspection but when the landlord presented the move-out inspection report to the tenant the tenant signed it electronically on November 20, 2017 indicating he agreed with the landlord's assessment. However, the tenant did not authorize the landlord to deduction any specific amount from the security deposit.

Below, I have summarized the landlord's claims against the tenant:

The landlord seeks to recover the costs of filing fee and affidavit to obtain the Writ of Possession in the amount of \$160.00 and the bailiff cost of \$816.86. In addition the locks were changed at a cost of \$105.00 that the landlord seeks to recover from the tenant because the tenant did not return the keys to the rental unit for another five days and by that time the locks were already changed.

Upon regaining possession of the rental unit the landlord found the unit very dirty and the landlord is seeking \$1,165.00 in compensation to clean the 3,800.00 square foot house. The landlord submitted that actual cleaning costs were more than the amount claimed; however, the landlord limited its claim to this amount.

The landlord also seeks to recover loss of rent for the month of November 2017 in the amount of \$3,500.00 as the house remained unrented until December 27, 2017. The landlord stated that when he filed this application in November 2017 a loss of rent for December 2017 had not yet been incurred. The landlord did not file and serve an Amendment to request loss of rent for December 2017 and I did not consider such a loss any further. The landlord indicated that he may pursue the tenant for loss of rent for December 2017 at a later date. In addition, the landlord paid \$21.00 to advertise the unit for rent that the landlord seeks to recover that cost from the tenant.

The landlord also seeks to recover unpaid utilities from the tenant and grass cutting costs the tenant had performed at the property by a contractor but billed to the landlord's pre-existing account without the landlord's authorization. The landlord pointed out that the tenant was responsible to pay for utilities and grass cutting under the terms of tenancy. The total amount claimed by the landlord for utilities and grass-cutting is \$480.15.

Finally, the landlord seeks to claim an NSF administration fee for the September 2017 rent cheque that bounced and recovery of the \$7.00 NSF fee the landlord's bank charged the landlord for the tenant's bounced rent cheque.

The landlord had originally claimed mailing costs for sending documents to the tenant but withdrew these claims after I informed the landlord that such costs were not recoverable under the Act. The landlord had also included in the claim the outstanding Monetary Order issued under the previous Application but the landlord withdrew this claim after I informed the landlord that an outstanding Monetary Order may be enforced in addition to one I provide with this decision.

In support of the landlord's claims, I was provided photographs and several documents including: the tenancy agreement including the Addendum; condition inspection reports; invoices, bills and receipts for the amounts claimed; and, spreadsheets showing calculations for utilities and cleaning.

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 the unopposed evidence before me, I provide the following findings and reasons.

1. Cost to regain possession of the rental unit

As seen in the decision issued for the previous Application for Dispute Resolution, the tenant violated the Act in failing to pay the rent when due or within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord then applied for and obtained an Order of Possession where the tenant was ordered to vacate the rental

unit. The tenant did not vacate as ordered or file an Application for Review Consideration within the time limit permitted and the tenant was still holding possession of the rental unit when the landlord applied for and obtained the Writ of Possession and had it executed by the court bailiff.

I am satisfied that the tenant's violations of the tenancy agreement and the Act resulted in the landlord incurring costs to obtain the Writ of Possession and have it executed by the bailiff. Therefore, I find the landlord entitled to recover these losses from the tenant and I award the landlord \$160.00 plus \$816.86 as requested.

2. Utilities

Upon review of the tenancy agreement and the Addendum, I accept the landlord's position that the tenant was required to pay for utilities and perform grass cutting at the rental unit. Upon review of the bills and spreadsheet provided, I find the landlord's determination of the utilities and grass cutting owed by the tenant to be reasonably accurate and I grant the landlord's request to recover \$480.15 from the tenant, as requested.

3. Loss of revenue and advertising

The tenant was bound to fulfill a fixed term tenancy agreement and the tenant brought the tenancy to an end early in failing to rent when due or within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent. Where a tenant breaches the fixed term tenancy by causing the tenancy to end early by his actions or neglect, the landlord may recover loss of revenue from the tenant and advertising costs. In this case, the landlord regained possession of the rental unit on November 3, 2017 upon execution of the Writ of Possession. The landlord proceeded to have the unit cleaned and advertised the unit for rent. The unit remained vacant for the rest of the month of November 2017 and I am satisfied the landlord is entitled to recover that loss of rent for the month of November 2017 from the tenant. I further find the landlord entitled to recover the advertising cost of \$21.00 from the tenant. Accordingly, I find the tenant responsible to compensate the landlord for loss of rent of \$3,500.00 for November 2017 and advertising costs of \$21.00 as requested.

4. Cleaning

Section 37 of the Act provides that the tenant is required to leave the rental unit reasonably clean at the end of the tenancy. The landlord provided unopposed evidence, including a condition inspection report and photographs, to demonstrate the unit was not left reasonably clean. I find the landlord's cleaning claim is reasonable especially when I consider this is a large home that would have required several hours of cleaning. Therefore, I grant the landlord's request for compensation of \$1,165.00 for cleaning.

5. NSF charges

Section 7 of the Residential Tenancy Regulations provides that a landlord may charge a tenant up to \$25.00 for an administrative fee for a returned cheque if the tenancy agreement provides for such a term. Section 7 of the Regulations also provides that the landlord may also charge a tenant for the fee the landlord's financial institution charged the landlord for the tenant's returned cheque.

Upon review of the tenancy agreement and the addendum, I find the tenancy agreement contains a valid provision for an administrative charge of \$25.00 for returned cheques. The landlord provided evidence that the tenant's September 2017 rent cheque was returned and the landlord's bank charged the landlord \$7.00. Therefore, I find the landlord is entitled to charge the tenant \$25.00 and \$7.00 as requested for the returned cheque and I award those amounts to the landlord.

6. Lock change

Section 37 of the Act provides that the tenant is required to return all means of access to the landlord at the end of the tenancy. The landlord submitted unopposed evidence that the tenant did not return the keys until five days after the bailiff executed the Writ of Possession and by then the landlord had already had the locks re-keyed on November 3, 2017. Therefore, I grant the landlord's request to recover the cost of \$105.00 to re-key the locks.

Filing fee, security deposit and Monetary Order

Given the landlord's success in this application I further award the landlord recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

In keeping with all of my findings above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant calculated as follows:

Bailiff costs	\$ 816.86
Writ of Possession costs	160.00
Utilities and grass cutting	480.15
Loss of rent – November 2017	3,500.00
Advertising cost	21.00
Cleaning	1,165.00
NSF charges (\$25.00 + \$7.00)	32.00
Lock re-keying	105.00
Filing fee	<u>100.00</u>
Sub-total	\$6,380.01
Less: security deposit	<u>(1,750.00)</u>
Monetary Order	\$4,630.01

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$4,630.01 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: July 20, 2018

Residential Tenancy Branch