



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL, MNDCL, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:47 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord and her husband (J.G.) attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, J.G. and I were the only ones who had called into this teleconference.

J.G. testified that the tenant was served with the landlord's application for dispute resolution via registered mail on August 26, 2019. A Canada Post Receipt evidencing the above mailing was entered into evidence. I find that the tenant was deemed served with the landlord's application for dispute resolution on August 31, 2019, five days after its registered mailing, in accordance with sections 89 and 90 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord and J.G., not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

J.G. provided the following undisputed testimony. This tenancy began in 2015 and ended on May 10, 2018. Monthly rent in the amount of \$6,000.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

J.G. testified that the landlord was awarded an Order of Possession for unpaid rent for the months of September, October and November 2017. A Direct Request Decision dated December 11, 2017 confirming the above testimony was entered into evidence. The file number for the December 11, 2017 Decision is on the cover page of this decision.

Monetary Claim for Unpaid Rent

J.G. testified that the tenant has not paid rent totaling \$18,000.00 for September, October and November of 2017 and the landlord is seeking a monetary award of \$18,000.00 for unpaid rent.

The landlord's application for dispute resolution also claimed the \$100.00 filing fee from the December 11, 2017 hearing which was awarded in that decision. I informed the landlord and J.G. in the hearing that as that award was made in the December 11, 2017

Decision, I will not consider it this application as the matter has already been conclusively decided.

Monetary Claim for Bailiff Fees

J.G. testified that the tenant was served with the Order of Possession granted in the December 11, 2017 Decision sometime in December of 2017 via registered mail and via posting the Order on the tenant's door.

J.G. testified to the following facts. The tenant refused to move out of the subject rental property and so the landlord hired a bailiff to remove the tenant. In February of 2018 a bailiff attended at the subject rental property to evict the tenant. Before the tenant was evicted, the landlord had a change of heart and allowed the tenant to remain at the subject rental property. A bailiff receipt dated February 20, 2018 in the amount of \$2,614.58 was entered into evidence. The tenant paid rent from December 2017 to the end of the tenancy.

J.G. testified to the following facts. In May of 2018 the landlord decided that she wanted to evict the tenant and had the bailiff attend at the subject rental property on May 10, 2018 and the tenant was evicted. A bailiff receipt dated May 31, 2018 in the amount of \$4,088.74 was entered into evidence. The landlord is seeking reimbursement of both bailiff bills in the amount \$6,703.32.

Monetary Claim for Damage and Compensation

J.G. testified to the following facts. Later in the same day the tenant was evicted, the tenant broke into the subject rental property, damaged the locks, broke a mirror and threw eggs throughout the subject rental property. J.G. testified that the landlord did not have proof that the tenant was responsible for the vandalism but believed it was retribution for being evicted. A police report was entered into evidence and confirms the damage done to the subject rental property but does not mentioned the tenant's name. The landlord entered into evidence two receipts for paint in the amount of \$95.01 each and a locksmith receipt for \$159.26. J.G. testified that the landlord is seeking \$1,500.00 to cover all the costs associated with cleaning up the subject rental property including the labour to paint the subject rental property and replace the locks.

Analysis

Monetary Claim for Unpaid Rent

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$6,000.00 on the first day of each month. Based on the testimony of J.G. and the December 11, 2017 Decision, I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlords \$18,000.00 in unpaid rent from September 2017 to November 2017.

Monetary Claim for Bailiff Fees

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that the landlord reinstated the tenancy when she allowed the tenant to continue to reside at the subject rental property after the bailiff attended in February of 2018. Therefore the Order of Possession used to evict the tenant in May of 2018 was no longer valid and the landlord is not entitled to be reimbursed for the May bailiff fees which were improperly incurred.

I find that changing her mind while the bailiff was at the subject rental property in February of 2018 constituted a failure of the landlord to mitigate her damages. The landlord could have made this decision before this expense was incurred. The landlord chose to reinstate the tenancy and must bear the cost of that decision.

The landlord's claim for reimbursement of the bailiff fees is dismissed without leave to reapply.

Monetary Claim for Damage and Compensation

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I find that while the landlord has proved that the subject rental property was vandalized, the landlord has failed to prove that the tenant committed the offense. The police report does not provide any information on a suspect and no further evidence was provided to support the landlord's claim that the tenant vandalized the subject rental property. I therefore dismiss the landlord's monetary claim for damage and compensation without leave to reapply.

As the landlord was successful in a portion of her application, I find that she is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord in the amount of \$18,100.00.

The landlord is provided with this 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: December 06, 2019