



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL MNDL MNRL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

Preliminary Issue: Service

The tenant stated she had not received the Notice of Hearing and Application for Dispute Resolution; the only reason she knew about the hearing was a reminder email generated by the RTB.

The landlord provided testimony that he served the documents at the forwarding address provided by the tenant by registered mail sent on September 9, 2019 which was forwarded by Canada Post to another address for the tenant. The landlord stated the package was returned to him marked unclaimed. The landlord provided the tracking number in support of service referenced on the first page.

Service of dispute resolution documents is set out in section 89 of the *Act* which states [emphasis added]:

89 (1) *An application for dispute resolution ... must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail **to a forwarding address provided by the tenant**;*
- (e) as ordered by the director under section 71 (1) ...*

I have considered the testimony of both parties. I have considered a finding in the Decision of September 27, 2018 (referenced on the first page), stating in part:

I accept the tenant's evidence that the landlord was served with their forwarding address in writing by the email of September 2, 2017.

I find the landlord served the tenant pursuant to section 89(1)(d) as he sent a copy of the documents by registered mail to a forwarding address provided by the tenant.

The hearing accordingly continued.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The tenancy between the parties has been the subject of three previous Applications and one Review Consideration, the file numbers for which appear on the first page.

The tenancy between the parties began in 2016; rent was \$1,095.00 payable on the first of the month.

The landlord issued a One Month Notice dated July 20, 2019 which the tenant disputed on August 1, 2017. Each party cross-claimed against the other for multiple heads of relief. The Decision of the Arbitrator dated September 8, 2017, found that the tenancy had ended on August 31, 2017 and dismissed the parties' "unclear and not organized" monetary claims with leave to reapply.

The tenant paid a pet and security deposit, a doubling of which was ordered repaid to the tenant in the Decision of another Arbitrator dated September 27, 2018.

It was agreed by the parties that the tenant paid rent for the month of August 2019. The tenant provided notice to the landlord on August 10, 2019 that she was vacating the unit at the end of August 2019. The tenant stated that the landlord was extremely difficult to get along with.

In this application, the fourth between the parties, the landlord claimed one month's rent for the month of September 2019 for failure of the tenant to provide proper notice of her intention to vacate the unit at the end of August 2019. The landlord stated he had no revenue from the unit during that month.

The landlord testified that he was unsure the tenant would move out at the end of August 2019 and he accordingly did not advertise the unit as being available until an undetermined date in September 2017. The landlord acknowledged that the unit was rented again starting October 1, 2019. The landlord did not submit efforts of attempting to find a replacement tenant.

The landlord claimed that the tenant did not properly mow the lawn. As a result, the landlord incurred two expenses for lawn mowing, for \$150.00 after the tenant vacated (for which the landlord submitted a receipt) and \$50.00 paid to another tenant for which the landlord did not submit a receipt.

The landlord submitted many documents including copies of texts, correspondence and photographs of areas with grass 2-3 feet high. He also submitted written statements

from other occupants of the building complaining about the tenant's use of the laundry room, mowing habits, yard use and so on. A copy of a letter is submitted from the tenant providing a defence of her mowing practices. It is clear the parties had multiple long-standing, intractable disputes.

The tenant stated that she maintained the lawn as she was required under the agreement between the parties, and she is not responsible to reimburse the landlord for either of these expenses.

The landlord also claimed reimbursement of the cost of \$100.00 for the replacement of a heater which the tenant took with her. The landlord did not submit a receipt. The tenant denied that she took a heater. She stated that the heater in the unit was broken.

The landlord claimed \$175.00 for replacement of keys. The landlord did not submit a receipt. The tenant asserted that she returned all keys to the landlord and denied that she is responsible to reimburse him for replacement keys.

The landlord stated that the tenant failed to return appliances to the house which had been stored in the garage at her request. He stated he had to return the appliances himself and requested reimbursement for his time of \$25.00. The tenant stated that the items were placed in the garage because they did not work. The tenant denied she was responsible for returning the items or that the landlord had a reasonable claim for his effort in doing so.

The landlord claimed \$19.87 for an outstanding utility which was the responsibility of the tenant and which she did not pay. The landlord submitted a copy of the bill. The tenant stated that all utility accounts were "rolled over" to her new unit and she paid all accounts. She denied she owed any outstanding utilities.

No condition inspection was conducted on moving in or moving out.

In summary, the landlord claimed as follows:

ITEM	AMOUNT
Rent for September 2017	\$1,095.00
Lawn mowing	\$150.00
Lawn moving	\$50.00
Key replacement	\$175.00
Utilities	\$19.87

Total claimed by landlord	\$1,489.87
----------------------------------	-------------------

Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here in the 60-minute hearing. The relevant and important aspects of the claims and my findings are set out below.

Damages

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

The claimant must prove the existence of the damage or loss. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.

Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

Reference to each of the landlord's claims follows.

Rent for September 2017

The tenant's reasons for ending this tenancy do not constitute a legal basis for ending the fixed term early. I find that the tenant breached their tenancy agreement by ending the tenancy early.

Where a tenant breaches their fixed term tenancy agreement, the tenant may be held liable to compensate the landlord for loss of rent. Section 7 of the *Act* provides that where a landlord claims against a tenant for loss of rent, the landlord has a burden to prove that the landlord took every reasonable effort to minimize the losses.

I have reviewed the documentary and oral evidence of the parties. I am unable to find the landlord made reasonable efforts to find a replacement tenant following the August 10, 2017 notice from the tenant.

I have considered the landlord's testimony that he was not certain the tenant would leave and that is why he did not try to find a replacement tenant right away.

I find the landlord has failed to establish that they took the steps necessary to mitigate damages in an efficient and economic manner to assure the unit was rented again as soon as possible.

Considering the evidence in the case, I find on a balance of probabilities that the landlord has *not* met the burden of establishing that the landlord did "whatever is reasonable to minimize the damage or loss".

I accordingly dismiss the landlord's claim for reimbursement for rent.

Remainder of the landlord's claims

The issue of lawn maintenance is a recurring theme in the disputes between the parties. In the Decision dated September 27, 2018, the Arbitrator stated in part:

The landlord's testimony consists of unproven allegations, anecdotes about past dealings, and issues which I find to be irrelevant such as the tenant misrepresenting their lawn care capabilities.

I accept the tenant's evidence that she maintained the lawn as required in the tenancy agreement. I found her evidence straight forward and believable. I do not find the landlord's submissions to be persuasive that the tenant failed to properly cut the grass and that these expenses were incurred because of her breach of the agreement.

I find the tenant's submissions to be convincing in all respects. I accept her version of events as credible that she did not take the heater or fail to return keys. I also accept her assertion that it was not her responsibility to return to the unit the stored appliances.

I find the landlord has failed to meet the burden of proof on a balance of probabilities with respect to the remainder of the claims.

I therefore dismiss the landlord's claims without leave to reapply. As the landlord has not been successful, I do not award the landlord reimbursement of the filing fee.

Conclusion

I therefore dismiss the landlord's claims without leave to reapply.

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: January 06, 2020

Residential Tenancy Branch