



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, OPB, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for damage to the unit - Section 67;
3. A Monetary Order for unpaid rent – Section 67;
4. An Order to retain the security deposit - Section 38;
5. An Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement – Section 67
6. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Landlord and Tenant were given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy of a fully furnished unit began on November 9, 2010 with an expiry date of February 28, 2011, following which the tenancy would revert to a month to month tenancy. Rent in the amount of \$2,000.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the

Tenant in the amount of \$1,000.00. On January 31, 2011, the Tenant informed the Landlord that she was moving out the same day. The Landlord served the Tenant with a notice to end tenancy for non-payment of rent on February 4, 2011 by posting the notice on the door as the Landlord believed that the Tenant had not yet moved out of the rental unit. On the same date, the Landlord left a request to the Tenant to complete a move-out inspection on February 7, 2011. The Tenant states that she returned to the unit on February 7 to clean the unit and left the keys and a letter with her forwarding address. The Tenant does not dispute that she was given 2 opportunities to complete a move-out inspection and that she failed to do so with the Landlord. Information on the file indicates that the Tenant did not file an Application for Dispute Resolution.

The Landlord claims \$2,000.00 in unpaid rent for the month of February 2011.

The Landlord claims \$199.92 for cleaning costs and has submitted the invoice.

The Landlord claims damage to the walls in the form of sticky marks and claims \$392.00 for the cost of painting and submitted the invoice. The Tenant disputes that the sticky marks required the painting of the walls. The Landlord stated that the walls had been damaged by a previous tenant resulting in walls that would not wipe clean and that the sticky marks could not be removed any other way.

The Landlord claims \$50 for a missing item and the Tenant does not dispute that claim or cost.

The quantum of the Landlord's monetary claim is **\$2,641.92**.

Analysis

At the Hearing, the Tenant confirmed and the Landlord did not dispute that the Tenant had departed the rental unit on February 7, 2011. Accepting this fact, I find that the Landlord does not require an Order of Possession and that part of the claim is hereby dismissed.

Section 45 of the Act provides that a Tenant may end a fixed term tenancy with a one (1) month notice for a date not earlier than the end date specified in the tenancy agreement. Accepting that the Tenant did not give such notice, I find that the Tenant did not end the fixed term tenancy and was required to pay February rent.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's testimony I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has not paid the outstanding rent and has not applied for Dispute Resolution to dispute the notice. The Tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Given the above facts, I find that the Landlord has established a monetary claim for **\$2,000.00** in unpaid rent.

Section 36 of the Act provides that where a landlord has provided the tenant with two (2) opportunities for an inspection and the tenant has not participated on either occasion, the right of the tenant to the return of the security deposit is extinguished. Given the Tenant's agreement that she did not participate in any of the inspections offered by the Landlord, I find that the Tenant's right to return of the security deposit is extinguished. I further accept the Landlord's evidence that the unit was not sufficiently clean and find that the Landlord has established a monetary claim for damages in the amount of **\$199.92**.

Given the Landlord's evidence that the walls of the unit were damaged by a prior tenant resulting in an inability to clean the walls of the unit, I find that the Landlord has not

established a monetary claim for the costs to paint the walls to clean the sticky spots left by the Tenant and I hereby dismiss that part of the application.

The landlord is entitled to recovery of the \$50 filing fee and the **security deposit** will be off-set from the award made herein. The Landlord has a total entitlement of **\$1,249.92** calculated as follows:

Calculation for Monetary Order

Loss of rent revenue	\$2,000.00
Damages	199.92
Filing Fees for the cost of this application	50.00
Less Security Deposit and interest <i>to date</i>	-1,000.00
Total Monetary Award	\$1,249.92

Conclusion

I order that the Landlord retain the **deposit** and interest of \$1,000.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,249.92**. If necessary, this order may be filed in the Small Claims 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: March 16, 2011.

Residential Tenancy Branch