

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, FF

Introduction

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord gave written evidence confirming that he sent the tenant a One Month Notice to End Tenancy for Cause on February 1, 2011 and a 10 Day Notice for Unpaid Rent on February 3, 2011 by registered mail. The tenant confirmed receiving these notices. The landlord testified that he sent the tenant a copy of his dispute resolution hearing package by registered mail on February 17, 2011 to the last known mailing address he had for the tenant. He provided the Canada Post Tracking Number to confirm this mailing. He also testified that he and a witness attempted to hand another copy of this package to the tenant at her place of work. When she refused to accept it, he left it on a counter for her telling her that he was doing so. Although the tenant said that she did not open the landlord's package, she said that she knew that this hearing was occurring at this time and was able to connect with the telephone conference call. I am satisfied that the landlord has served all of the above documents in accordance with the *Act*.

The tenant testified that she vacated the rental unit on February 10, 2011. The landlord said that he did not know that she had vacated the unit until mid-February when the landlord attended the rental unit, found the door unlocked and the tenant's key on one of the countertops. Since the tenant has vacated the rental unit, the landlord said that he no longer needed an Order of Possession.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover his filing fee from the tenant?

Background and Evidence

This one-year fixed term tenancy commencing on April 16, 2010 was scheduled to continue in effect until March 31, 2011. Monthly rent was set at \$1,450.00, payable on the first of the month. The landlord continues to hold the tenant's \$725.00 security deposit.

The landlord applied for a monetary order of \$2,850.00 for unpaid rent. Of this amount, the landlord testified that \$1,450.00 was for unpaid rent for February 2011. The tenant confirmed that she did not pay any portion of her February 2011 rent. The remaining \$1,400.00 of the \$2,850.00 requested in the landlord's application was for fines applied by the strata council that the landlord maintains resulted from various complaints about the tenant. The landlord said that as of this date none of these fines have been paid by the landlord or the tenant. At the hearing, the landlord also asked for permission to include additional losses arising from this tenancy due to the poor condition of the rental unit when the tenant vacated the suite.

Analysis

The landlord's application for a monetary award only identified unpaid rent; there is no mention of losses or damage arising from this tenancy in the landlord's application. At the time of the landlord's application, the only confirmed monetary loss the landlord had incurred was for the tenant's non-payment of rent for February 2011. The landlord confirmed that he has not yet paid the strata fines nor has he applied for dispute resolution regarding the damage that became apparent after the tenant ended this tenancy.

Under these circumstances, I limit the landlord's request for a monetary award to the items identified in his February 15, 2011 application for dispute resolution. These were the issues identified in the landlord's notice to the tenant and these were the issues the tenant would expect to be considered at this hearing.

Based on the undisputed evidence presented at the hearing, I allow the landlord a monetary award of \$1,450.00 for unpaid rent in February 2011. I allow the landlord to retain the tenant's \$725.00 security deposit plus interest to partially offset the \$1,450.00 monetary award. No interest is payable over this period.

Since the landlord was successful in his application, I allow him to recover his \$50.00 filing fee.

I dismiss the landlord's request for a monetary award for reimbursement of fines applied by the strata council with leave to reapply. Similarly, the landlord is at liberty to apply for

additional losses or damages arising out of this tenancy that became apparent after he submitted his initial application for dispute resolution for a monetary award for unpaid rent.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$775.00. This monetary Order allows the landlord unpaid rent from February 2011 and recovery of his filing fee. I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award granted.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.