



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, 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 for unpaid rent 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 their sworn testimony, to make submissions and to cross-examine one another.

The landlord entered into written evidence copies of three 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notice or Notices) provided to the tenant. The landlord entered into written evidence a witnessed statement that the first of these was handed to the tenant on December 2, 2011 at 12:50 p.m., the 10 Day Notice for January 2012 was posted on the tenant's door on January 3, 2012, and the 10 Day Notice for February 2012 was posted on the tenant's door on February 2, 2012. The tenant confirmed that he received these 10 Day Notices. The tenant also confirmed that he received a copy of the landlord's dispute resolution hearing package sent by registered mail on February 3, 2012. I am satisfied that the landlord served these documents and his written evidence package in accordance with the *Act*.

At the commencement of the hearing, the tenant said that he left the keys for the landlord on February 3, 2012 and removed all of his possessions from the rental unit by that date, with the exception of his bed frame which he could not remove. The landlord said that he discovered the tenant's keys left on the mantle in the rental property about a week before this hearing. He said that he has taken possession of the premises as the tenant has apparently vacated the rental unit, although the premises required considerable cleaning after the tenant vacated. As this tenancy has ended, the landlord withdrew his request for 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 all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy commenced on September 7, 2011. Monthly rent is set at \$995.00, payable on the first of the month. The landlord continues to hold the tenant's security deposit of \$447.50 paid on September 6, 2011.

The landlord entered undisputed testimony that he issued 10 Day Notices for November 2011, December 2011, January 2012 and February 2012. The tenant did not dispute the landlord's claim that the landlord has not received any payments towards any of this outstanding rent for these months.

The tenant testified that that he tried to contact the landlord a number of times to pay his November 2011 rent but was unable to reach him or meet with him to provide his payments. He said that he did not believe that he should be held responsible for unpaid rent for all of February 2012 because he vacated the rental unit on February 3, 2012. He did not dispute the landlord's claim that he did not give the keys directly to the landlord.

Analysis

I find undisputed evidence that the tenant has not made any rent payments towards this one-year fixed term tenancy since he made his last payment for October 2011. Although he received repeated 10 Day Notices, he did not vacate the rental unit until after rent for February 2012 became due. He did not leave the key directly with the landlord and did not remove all of his possessions from the rental unit and yield vacant possession of the premises to the landlord. I accept the landlord's testimony that he did not realize that the tenant was not intending to return to the rental unit until mid-February 2012. Although he said that he has placed advertisements on two popular rental websites since he obtained possession of the premises, the landlord has been unsuccessful in finding a new tenant as of the date of this hearing. I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to attempt to mitigate the tenant's losses arising out of the tenant's breach of the terms of his fixed term tenancy agreement.

Under these circumstances, I find that the landlord is entitled to a monetary award for unpaid rent for November 2011, December 2011, January 2012 and February 2012.

As the landlord has been successful in his application, I allow him to recover his filing fee for this application from the tenant. I also allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is applicable over this period.

Conclusion

As this tenancy has ended, the landlord's application for an Order of Possession is withdrawn.

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover unpaid rent owing from this tenancy and for the landlord's filing fee and to retain the tenant's security deposit in partial satisfaction of the monetary award issued in this decision:

| Item | Amount |
|---|-------------------|
| Unpaid November 2011 Rent | \$995.00 |
| Unpaid December 2011 Rent | 995.00 |
| Unpaid January 2012 Rent | 995.00 |
| Unpaid February 2012 Rent | 995.00 |
| Less Security Deposit | -447.50 |
| Recovery of Filing Fee for this application | 50.00 |
| Total Monetary Order | \$3,582.50 |

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*.

Dated: February 24, 2012

Residential Tenancy Branch