



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MND, MNR, MNSD, O

Introduction

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

- an Order of Possession for landlord's use of the property pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit, site or property 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
- other unspecified outcomes.

The tenant did not attend this hearing, although I waited until 9:50 a.m. in order to enable her to connect with this hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. She testified that she handed the tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) on March 20, 2012. She entered into written evidence a copy of the 2 Month Notice and a copy of the tenant's written notice to end her tenancy by April 14, 2012, handed to the landlord by the tenant on April 4, 2012. The landlord also testified that she handed the tenant a copy of her dispute resolution hearing package at 4:15 p.m. on April 6, 2012. I am satisfied that the parties served each other with the above documents in accordance with the *Act*.

As the tenant vacated the rental unit by April 15, 2012 and the landlord already has possession of the premises, the landlord withdrew her application for an Order of Possession. The landlord also testified that she returned all of the tenant's security deposit to her when she vacated the rental unit. As such, the landlord withdrew her application to retain the tenant's security deposit.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Background and Evidence

The landlord testified that this periodic tenancy commenced on June 1, 2011. Monthly rent was set at \$700.00, payable in advance on the first of each month. As noted above, the landlord testified that by April 15, 2012, she had returned the tenant's \$350.00 security deposit paid on May 6, 2011. She also testified that she provided the tenant with an additional \$350.00 payment by April 15, 2012 for the remainder of the one month rent that she was responsible to provide to the tenant to comply with the terms of section 51 of the *Act*.

The landlord applied for a monetary award of \$700.00. This amount was for unpaid rent that the landlord identified as owing for April 2012. She gave undisputed oral and written evidence that the tenant did not pay any rent for April 2012. At the hearing, the landlord said that she was not pursuing any claim for damage to the rental unit.

Analysis

Section 51 of the *Act* reads in part as follows:

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

Section 50(1) of the *Act* allows a tenant who receives a notice to end tenancy for landlord's use of the property (pursuant to section 49 of the *Act*) under these circumstances to end the tenancy early by "giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice." Section 50(3) of the *Act* states that "a notice under this section does not affect the tenant's right to compensation under section 51."

Based on the undisputed evidence submitted by the landlord, I am satisfied that the tenant's April 4, 2012 notice to end this tenancy earlier than the May 31, 2012 date identified in the landlord's 2 Month Notice was submitted in accordance with section 50(1) of the *Act*. I find that the tenant's withholding of rent for the first one-half of April 2012 was done in accordance with section 51(1.1) and (2) of the *Act*. Through her withholding of rent for the first two weeks of April 2012 when she remained in the rental unit, the tenant is credited for having received one-half of the \$700.00 payment (i.e.,

\$350.00) the landlord was required to provide to the tenant pursuant to section 51(1) of the *Act*. The landlord still owed the other half of this \$700.00 payment due to the tenant pursuant to section 51(1) of the *Act*, until the end of the tenancy when the landlord added a \$350.00 payment to the return of the tenant's security deposit.

Based on the undisputed evidence provided by the landlord, I find that the landlord's payment of \$700.00 to the tenant by April 15, 2012 has given the tenant the proper allowances under section 50, 51(1) and 51(1.1) of the *Act* and has returned the tenant's security deposit in full. As such, I find no basis for the landlord's current application for a monetary award of \$700.00. For these reasons, I dismiss those portions of the landlord's application that were not withdrawn by the landlord during this hearing without leave to reapply.

Conclusion

The landlord's application for an end to this tenancy and an Order of Possession is withdrawn. The landlord's application for authorization to retain the tenant's security deposit is withdrawn.

I dismiss the remainder of the landlord's application for dispute resolution 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: April 25, 2012

Residential Tenancy Branch