



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNSD, MNDC, O

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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- 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.

The tenant did not attend this hearing, although I waited until 1:47 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the agent) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The agent testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door on July 2, 2012. The agent also testified that she served the tenant with a copy of the landlord's dispute resolution hearing package well in advance of the August 20, 2012 date when the tenant abandoned this rental unit. I am satisfied that the landlord's agent served the above notices in accordance with the *Act*.

At the hearing, the agent testified that she no longer required an Order of Possession as she has possession of the rental unit. As per the agent's request, the landlord's application for an end to tenancy and an Order of Possession is withdrawn.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Background and Evidence

This one-year fixed term tenancy commencing on August 1, 2011 was scheduled to end on July 31, 2012. Monthly rent was set at \$1,500.00, payable in advance on the 31st of each month. The landlord continues to hold the tenant's \$750.00 security deposit paid on July 3, 2011.

When the tenant refused to vacate the rental unit on July 31, 2012 as per the terms of their residential tenancy agreement, the landlord applied for an Order of Possession under section 55(2)(c) of the *Act*. The agent testified that the tenant remained in the rental unit for August 2012 without paying rent. The agent requested a monetary award of \$1,500.00, the amount cited on the application for dispute resolution, for loss of rent for August 2012. Although the agent had located a tenant who was planning to occupy the rental unit for August 2012, that tenant was unable to take occupancy of the rental unit while the tenant overstayed her tenancy. The agent stated that the new tenant is scheduled to move into the rental unit on September 1, 2012. The agent testified that the landlord will not be receiving any rent for August 2012 for this tenancy.

Analysis

The landlord's application for an Order of Possession is withdrawn. Based on the undisputed evidence, I find that the tenant did not vacate the rental unit by July 31, 2012, the scheduled date for the end of her tenancy. Both the landlord and the tenant had initialled that section of their tenancy agreement that committed that the tenancy would end on that date unless they entered into a new residential tenancy agreement to extend the tenancy. As no such new agreement was established, I find that the landlord has incurred losses of one month's rent as a result of the tenant's refusal to abide by the terms of her tenancy agreement. I also find that the landlord has taken adequate measures pursuant to section 7(2) of the *Act* to mitigate the tenant's losses.

I issue a monetary award in the landlord's favour of \$1,500.00, the amount of loss of rent demonstrated by the landlord for August 2012 for this tenancy. I allow the landlord to retain the tenant's security deposit to partially offset this monetary award.

Conclusion

I issue a monetary Order in the amount of \$750.00 in the landlord's favour which allows the landlord to recover her loss of rent for this tenancy and to retain the tenant's security deposit. 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: August 22, 2012

Residential Tenancy Branch