



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

This tenancy started on March 15, 2012 for a fixed term tenancy of one year. Rent for this unit was \$1,150.00 per month and was due on either the 30th or the 31st of each month. The tenant paid a security deposit of \$575.00 on March 15, 2012.

The landlord testifies that the tenant was served with a 10 Notice to End Tenancy on July 01, 2012, by posting the notice to the tenant's door. This Notice states the tenant has five days to pay the outstanding rent or dispute the Notice by applying for dispute resolution or the tenancy will end on July 14, 2012. The landlord testifies the tenant did not pay the outstanding rent and moved from the rental unit on July 31, 2012. The landlord states the rental unit was not re-rented until August 08, 2012 and the landlord amends their application to recover a loss of income for August of \$1,150.00 to a loss of Income of for the first week in August only of \$259.67. The landlord seeks a Monetary Order to recover rent and seeks to recover the \$50.00 filing fee.

The landlord requests an Order to keep the tenants security deposit of \$575.00 in partial payment of the rent arrears.

The tenant testifies that she was away when the landlord says he served the 10 Day Notice to End Tenancy and did not receive the Notice. The tenant agrees she has not paid rent for July, 2012 and agrees she vacated the rental unit on July 31, 2012. The tenant states the landlord did not take steps to re-rent the unit for August after the tenant gave the landlord oral notice on July 24, 2012 that she would be ending the tenancy on August 01, 2012.

The landlord testifies that as he was unsure which date the tenant was leaving the unit so he could not arrange to re-rent the unit for August 01, 2012. The landlord testifies that as soon as the tenant sent the landlord a text saying the tenant had left the unit and the keys were in the mailbox the landlord was able to re-rent the unit for the following week.

At the end of the hearing the tenant provided her current address for service of the decision and any Orders

Analysis

Section 26 of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord has testified that rent is due on the last day of each month and I am satisfied that the landlord has provided sufficient evidence to support their claim for unpaid rent to the sum of \$1,150.00. I further find that this was a fixed term tenancy which was not due to expire until March 14, 2013. I refer the tenant to s. 45(2) of the Act which states:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Consequently I find the tenant ended the tenancy before the fixed term and is in breach of the tenancy agreement. The landlord mitigated the loss to the tenant by re-renting the unit out after the first week in August; therefore it is my decision that the landlord is entitled to recover the loss of rent for that first week in August to the sum of \$259.67.

I find the landlord is entitled to a Monetary Order to recover unpaid rent and loss of rental income to the total sum of **\$1,409.67** pursuant to s. 67 of the Act.

The landlord is therefore entitled to keep the tenants security deposit of **\$575.00** pursuant to s. 38(4)(b) of the Act.

As the landlord has been successful with their amended claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. The landlord will receive a Monetary Order for the following amount:

Unpaid rent and loss of rent	\$1,409.67
Less security deposit	(-\$575.00)
Filing fee	\$50.00
Total amount due to the landlord	\$884.67

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$884.67**. The order must be served on the tenant and is enforceable through the Provincial Court 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: August 16, 2012.

Residential Tenancy Branch