



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

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

- 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 the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:14 a.m. in order to enable him to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she received the tenant's July 11, 2012 notice that he was no longer planning to take occupancy of this rental unit. The landlord testified that she sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on August 13, 2012. She provided a copy of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing to the most recent mailing address that the tenant had provided to the landlord. I am satisfied that the landlord served the hearing package to the tenant in accordance with the *Act*.

At the commencement of the hearing, the landlord revised the amount of the monetary award she was seeking, reducing it from \$1,890.00 to \$385.00 plus the \$50.00 filing fee. The landlord also asked for authorization to retain the tenant's \$410.00 security deposit.

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

For the purposes of the *Act*, this tenancy began on May 30, 2012 when the parties signed a Residential Tenancy Agreement (the Agreement) in which they entered into a

one-year fixed term tenancy that was to begin on July 1, 2012. The landlord entered undisputed oral and written evidence that the tenant did not take occupancy of the rental unit, even though he conducted a joint move-in condition inspection on June 29, 2012, and signed the report of that joint inspection. Monthly rent according to the Agreement was set at \$820.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$410.00 security deposit paid on May 30, 2012. The landlord provided written evidence that the rental unit was re-rented as of September 1, 2012.

The landlord's original application for dispute resolution sought a monetary award of \$1,890.00 for the following items:

Item	Amount
Unpaid July 2012 Rent	\$820.00
Unpaid August 2012 Rent	820.00
Liquidated Damages (Lease Break) Fee	250.00
Total Monetary Award Requested	\$1,890.00

At the hearing, the landlord testified that the tenant's pre-paid cheque for rent for August 2012 was negotiable. She said that \$845.00 was deposited in the landlord's favour on August 1, 2012. The landlord testified that the landlord was no longer seeking a monetary award for unpaid rent for August 2012. The landlord also reduced the amount of the monetary award sought for unpaid rent for July 2012 by the \$25.00 overpayment made by the tenant for August 2012. The landlord testified that she was no longer seeking a liquidated damages fee from the tenant. The revised amount of the monetary award being sought by the landlord was \$845.00 (including the recovery of the tenant's security deposit).

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the tenant was in breach of his fixed term tenancy agreement by failing to pay rent for July 2012. As such, the landlord is entitled to compensation for the loss of rent he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*. There is undisputed evidence that the tenant did not pay rent for July 2012. Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises and was able to locate a new

tenant who took occupancy September 1, 2012. I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenant's loss.

Based on the undisputed evidence of the landlord, I find that the landlord is entitled to a monetary award in the amount of \$795.00 for unpaid rent owed for July 2012 (\$820.00 - \$25.00 = \$795.00). I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of this monetary award. No interest is payable. I allow the landlord to recover the filing fee for this application from the tenant.

Conclusion

I issue a monetary award in the landlord's favour under the following terms which allows the landlord to recover unpaid rent and the filing fee for this application and to retain the tenant's security deposit:

Item	Amount
Unpaid July 2012 Rent (\$820.00- \$25.00 = \$795.00)	\$795.00
Less Security Deposit	-410.00
Filing Fee	50.00
Total Monetary Order	\$435.00

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: October 31, 2012

Residential Tenancy Branch