



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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; 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 tenant confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on September 26, 2012. I am satisfied that the landlord served this package to the tenant in accordance with the *Act*.

Although the landlord's initial application for dispute resolution sought an Order of Possession for unpaid rent, the landlord withdrew this aspect of the application because the landlord had obtained possession of the rental unit well in advance of the landlord's application.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

Both parties agreed that this tenancy commenced on June 1, 2012. Although both parties agreed that they had a written residential tenancy agreement for this tenancy, they disagreed as to the nature of that agreement. The landlord testified that this was a one-year fixed term tenancy requiring the tenant to remain in the rental unit until May 31, 2012. The tenant testified that he had a periodic (month-to-month) tenancy agreement. Neither party entered into written evidence a copy of that agreement. The landlord testified that he left his only copy of the agreement in the tenant's rental unit and no longer has that agreement.

Monthly rent was set at \$800.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$400.00 security deposit paid on or about May 28, 2012. The tenant testified that he vacated the rental unit by July 1, 2012, after having given the landlord his oral notice to end the tenancy about a week earlier. He testified that he attempted to give the landlord a written notice to end this tenancy, but the landlord refused to accept it from him. The landlord said that he did not realize the tenant had vacated the rental unit until the tenant's N.S.F. cheque for July 2012 was returned to the landlord by the bank in mid-July 2012. He testified that he gained vacant possession of the rental unit in mid-June 2012, after the tenant abandoned the rental unit.

Although the landlord conducted a joint move-in condition inspection with the tenant, the landlord did not produce a condition inspection report for that inspection. The landlord did not produce a move-out condition inspection report after the tenant vacated the rental unit.

The landlord's application for a monetary award of \$1,600.00 included the following items listed in the Details of the Dispute in his application for dispute resolution:

Item	Amount
Unpaid July 2012 Rent	\$800.00
NSF Cheque Fee - July 2012 Rent	25.00
Unpaid August 2012 Rent	800.00
Cleaning	50.00
Landlord's Fuel Costs	50.00
Total of Above Items	\$1,725.00

Analysis

In the absence of any copy of the residential tenancy agreement, I find that the landlord has not provided sufficient evidence to demonstrate that this was a one-year fixed term tenancy. As such, I find that the tenancy was a periodic tenancy.

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. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for July 2012, the tenant would have needed to provide his notice to end this tenancy before June 1, 2012. Section 52 of the *Act* requires that a tenant provide this

notice in writing. As there is undisputed evidence that neither of these occurred, I find that the tenant did not comply with the provisions of section 45(1) of the *Act* and the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing.

There is undisputed evidence that the tenant did not pay any rent for July 2012. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for July 2012. He gave undisputed sworn testimony that he listed the availability of the rental unit on a popular rental website and showed the premises to a number of prospective renters that month. The landlord was successful in re-renting the premises for the same amount as was being obtained from the tenant as of 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 for July 2012. I issue a monetary award in the landlord's favour in the amount of \$800.00 for loss of rent for July 2012, plus the \$25.00 N.S.F. fee applied by the bank for the cheque issued by the tenant to the landlord for that month. I allow the landlord's application for a recovery of his \$50.00 filing fee.

As the landlord has not established that this was a fixed term tenancy agreement, I dismiss the landlord's application for a monetary award for unpaid rent for August 2012, without leave to reapply. I also dismiss the remainder of the landlord's application for a monetary award for such issues as cleaning and fuel charges without leave to reapply. In so doing, I note that the landlord provided no receipts, photographs or copies of move-in or move-out condition inspection reports to support his application for cleaning. As mentioned at the hearing, the only recoverable cost allowed under the *Act* for the pursuit of an application for dispute resolution is by way of recovery of the filing fee for the landlord's application.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and his filing fee and to retain the tenant's security deposit:

Item	Amount
Unpaid July 2012 Rent & NSF Cheque Fee (\$800.00 + \$25.00 = \$825.00)	\$825.00
Less Security Deposit	-400.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$475.00

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.

The landlord's application for an Order of Possession is withdrawn.

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: December 14, 2012

Residential Tenancy Branch