

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”) by the landlord for an order of possession for unpaid rent, for a monetary order for unpaid rent or utilities, and to recover the filing fee.

An agent for the landlord attended the hearing. The agent gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice”) was considered. The agent provided affirmed testimony that the Notice was served on the tenant by registered mail on December 21, 2012. The agent provided a registered mail receipt with tracking number as evidence and confirmed that the name and address matched the name of the tenant and that the tenant was still living in the rental unit on the date she was served, as she saw the tenant in the rental building on December 30, 2012. Documents sent by registered mail are deemed served five days after mailing under the *Act*. The landlord stated that the registered mail was returned as “unclaimed”. I find the tenant was duly served on the fifth day after mailing, in accordance with the *Act*.

Preliminary and Procedural Matters

At the start of the hearing, the agent confirmed that after posting a 24 Hour Notice on the tenant’s door, they entered the rental unit the day before the hearing on January 21, 2013. The agent stated that the rental unit had been left abandoned and vacant and as a result, the agent was withdrawing their request for an order of possession as they have already obtained possession of the rental unit.

The agent testified that rent received by the tenant in December was applied to unpaid rent for October 2012, and as a result, they are seeking unpaid rent for December 2012 in the amount of \$1,150.00 and unpaid rent for January 2013 in the amount of \$1,150.00. I grant the agent’s request to include unpaid rent for January 2013 in their monetary claim as this would not prejudice the tenant given that it is reasonable that the tenant would know or have ought to have known that by not vacating the rental unit by the effective date on the Notice, that rent would be due for January 2013.

The agent testified that as the landlord did not submit hydro receipts in evidence, she was withdrawing their claim for unpaid hydro costs.

Issue to be Decided

- Is the landlord entitled to a monetary order for unpaid rent under the *Act*, and if so, in what amount?

Background and Evidence

A fixed term tenancy began on April 1, 2012 and reverted to a month to month tenancy on September 30, 2012. Monthly rent in the amount \$1,150.00 was due on the first day of each month. A security deposit of \$575.00 was paid by the tenant at the start of the tenancy.

The agent testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated December 4, 2012 with an effective vacancy date of December 17, 2012. The tenant did not dispute the 10 Day Notice or pay rental arrears within 5 days of receiving the 10 Day Notice. The tenant did not vacate the rental unit on or before December 17, 2012 pursuant to the 10 Day Notice.

The agent testified that October 2012 rent had never been paid by the tenant so when a payment was received in December 2012, that payment was applied to October 2012 unpaid rent arrears. Therefore, the agent is seeking unpaid rent for December 2012 and January 2013. After posting a 24 Hour Notice on the tenant’s door, the landlords entered the rental unit on January 21, 2013 and found the rental unit abandoned and vacant.

Analysis

Based on details of the application and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Claim for December 2012 and January 2013 rent – The agent for the landlord testified that rent for the months of December 2012 and January 2013 were not paid, although the unpaid rent for October 2012 has been paid. Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. **I find** the landlord has met the burden of proof and has established a monetary claim in

the amount of **\$2,300.00** comprised of \$1,150.00 for December 2012 unpaid rent, and \$1,150.00 for January 2013 unpaid rent.

Security deposit of the tenant - The tenant's security deposit of \$575.00 has accrued \$0.00 in interest since the start of the tenancy. The agent stated that the tenant has not provided a forwarding address by the tenant and requested to retain the security deposit towards the unpaid rent.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

Monetary Order – I find that the landlord is entitled to a monetary claim of **\$2,350.00** comprised of \$2,300.00 in unpaid rent and the \$50.00 filing fee. This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit. I authorize the landlord to retain the tenant's full security deposit of \$575.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$1,775.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlord has established a total monetary claim of **\$2,350.00**. I authorize the landlord to retain the tenant's full security deposit of \$575.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$1,775.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 22, 2013