



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ming Properties Inc. c/o Pacifica First Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, CNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on February 8, 2013 for:

1. An Order cancelling a Notice to End Tenancy – Section 46; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on February 18, 2013 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation – Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

At the onset of the Hearing, the Landlord stated that as the Tenant has moved out of the unit on February 28, 2013, an order of possession was no longer required.

Issue(s) to be Decided

Is the Notice valid?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fee?

Background and Evidence

The Landlord states that a prior tenancy existed from June 1 2007 with the Tenant until the Tenant entered into a sole tenancy agreement on November 1, 2012. There is no dispute that at times during this period the Tenant had co-tenants living in the unit. The Tenant states that there were times during this first period of time that the Tenant was not a tenant in the unit. Neither Party has a copy of a tenancy agreement for a tenancy between June 2007 and October 31, 2012 and the Landlord has no knowledge of a whether a written first tenancy agreement exists. The current tenancy indicates rent of \$1,258.00 and a security deposit paid by the Tenant of \$600.00.

The Landlord states that he started acting as Landlord in February 2013 and does not have prior knowledge of the first or latest tenancy other than what is in their records. The Landlord states that the Tenant owes rental arrears from July and August 2011 and states that the Tenant is the only person on record as the Tenant for that time. The Witness states that rent payable during those months was \$1,258.00.

The Tenant states that her co-tenant did not pay their portion of the rent in July 2011 and that the Tenant paid \$630.00 for that month's rent. The Tenant states that she paid all rent for August 2011. The Tenant states that she was unaware that any other rent owed from the first tenancy as nobody told her there were arrears. The Tenant states that she only learned that arrears were being claimed when the Landlord served the 10 day notice for unpaid rent (the "Notice") on February 4, 2013. The Tenant moved out of the unit on February 28, 2013.

The Witness states that the amount owing for July 2012 rent was \$506.65 and that the rent paid by the Tenant in August 2012 was applied to rental arrears for June, July and August 2012. It is noted that the accounting evidence provided by the Landlord indicates that arrears from the period August 2009 to October 31, 2012 were carried over and applied to the Tenant's subsequent rental account. Neither the Landlord nor

Witness know whether the Tenant was provided a bill or any other accounting for the arrears prior to the second tenancy or prior to the service of the Notice.

The Landlord confirmed that the Tenant paid all rent for November 2012 to the end of the tenancy. The Landlord claims rental arrears of \$506.65 for July 2012 and \$1,258.00 for August 2012.

The Landlord claims \$6.45 for a mail key charge. The Tenant states that this amount was paid in December 2012 and provided a copy of the cheque indicating this payment.

The Landlord states that the Tenant owes \$25.00 for an NSF charge from February 15, 2011. The Tenant states that this NSF charge was also paid in the December 2012 as otherwise she would not have been allowed to enter into the second tenancy agreement. The copy of the cheque indicates this amount being paid as well.

The Landlord states that the Tenant did not provide sufficient notice to move out of the unit and claims rent for March 2013.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. As the Tenant paid all rents due pursuant to the tenancy agreement entered into for November 1, 2012, I find that the Notice is invalid and that, although the tenancy has ended, the Tenant is entitled to its cancellation and also to recovery of the **\$50.00** filing fee paid to dispute the Notice.

Given the lack of a first tenancy agreement that includes provisions for NSF fees payable by the Tenant, I find that the Landlord has not established any authority to charge the Tenant such a fee and I order the Landlord to return the amount of **\$50.00** to the Tenant. Given the copy of the December 2012 cheque indicating that the mail key

was paid for, I find that the Landlord has not established this debt and I dismiss this claim of the Landlord.

Section 26 of the Act provides that a tenant must pay rent as it is due under a tenancy agreement. Co-tenants are jointly responsible for meeting the terms of a tenancy agreement. Given the Tenant's acknowledgement that she was a Tenant in July 2012, that the co-tenant failed to pay their portion of the rent for that month and that the Tenant paid \$630.00 for this month while the rent was at \$1,268.00, I find that the Landlord has substantiated a monetary entitlement to rental arrears for this month in the amount of **\$638.00**

Given the lack of a tenancy agreement for the period August 2009 to October 2012, noting that the arrears from this period appear to have been carried forward and applied to the Tenant's tenancy that started in November 2012 without notice, accounting or claim made to the Tenant and considering the Tenant's evidence that the Tenant was not a Tenant periodically during this period, I find that the Landlord has failed to establish on a balance of probabilities that the Tenant is responsible for arrears from this period. I therefore dismiss the Landlord's claim for any further rental arrears.

Where a Landlord has elected to end a tenancy because of non-payment of rent, a tenant is not liable to pay rent after the tenancy agreement has ended pursuant to this election. As the Landlord served the Tenant with a Notice and noting that there is no dispute that February 2013 rent was paid, I find that the Landlord is not entitled to rent for March 2013 and I dismiss this claim. As the Landlord's success with the application has been limited, I decline to award recovery of the filing fee.

The Tenant is entitled to **\$100.00**. Deducting this amount from the Landlord's entitlement of **\$638.00** leaves **\$538.00** owing by the Tenant. As the Landlord holds **\$600.00** plus zero interest as the security deposit, I order the Landlord to deduct **\$538.00** from the security deposit and to return forthwith the remaining **\$62.00** to the Tenant.

Conclusion

I Order the Landlord to retain the amount of \$538.00 from the security deposit plus interest in the amount of \$600.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$62.00**. If necessary, this order may be filed in the Small Claims Court and enforced 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: March 05, 2013

Residential Tenancy Branch

