



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, ET, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent ; an Order of Possession for cause; an Order of Possession based on an Early End to Tenancy; for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; 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 for unpaid rent, for cause and for an Early End to Tenancy.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*. The landlord testifies the tenant was served in person on February 13, 2013 and again with the amended copy of the landlord's application on February 20, 2013.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord permitted to keep the tenants security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testifies that this month to month tenancy started on December 01, 2012. Rent for this unit was \$550.00 per month and was due on the first day of each month in advance. The landlord testifies that they reduced the rent to \$530.00 as the landlord agreed to pay the cable charges. The tenant paid a security deposit of \$275.00 on November 28, 2012.

The landlord testifies that the tenant failed to pay rent for February, 2013 to the sum of \$520.00. A 10 Day Notice was served upon the tenant on February 01, 2013. The landlord testifies that she realized that the notice must be served the day after the day that rent is due so served the tenant with a second 10 Day Notice on February 13, 2013. This Notice had an effective date of February 23, 2013 and was served in person to the tenant. The notice informed the tenant that they had five days to pay the rent or dispute the notice or move from the rental unit on the effective date of the Notice. The landlord testifies the tenant did not pay the outstanding rent and did not move from the rental unit on February 23, 2013.

The landlord testifies that the tenant did not move from the rental unit until March 04, 2013 and failed to pay rent for March. The landlord seeks to recover a loss of rental

income for half of March as the landlord is hoping to have the rental unit re-rented. The landlord therefore seeks to recover the sum of \$260.00.

The landlord seeks an Order permitting the landlord to keep the security deposit of \$275.00 to offset against the unpaid rent.

The landlord testifies that the tenant has left some damage and cleaning in the unit however due to the scheduled hearing date the landlord has not yet been able to determine what damages and cleaning are required at this time. The landlord seeks permission to reapply for this portion of the claim.

The landlord testifies that the tenant had a dog in the unit and the tenant allowed the dog to defecate and urinate in the yard and the walkway to the yard. The landlord testifies that the tenant did not clear up the dog feces and the snow was soaked in dog urine. The landlord testifies that she had to go to the rental unit at least once a week for three months to shovel up the urine soaked snow to prevent it being tramped into the house. The landlord testifies that she also had to shovel up the dog feces. The landlord testifies that this was particularly important for when the landlord has to show the rental unit to potential tenants to create the right impression of the unit and yard in order to re-rent the unit. The landlord seeks to recover the sum of \$100.00 to do this work.

The landlord requests an Order to recover the \$50.00 filing fee from the tenant.

Analysis

I refer the parties to s. 26 of the *Act* which 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.

I find that the landlord has established that the tenant has failed to pay rent for February, 2013 to the amount of **\$520.00** the landlord is entitled to a Monetary Order recover this rent pursuant to s. 67 of the *Act*.

I refer the parties to the Residential Tenancy Policy Guidelines #3 which state, in part, that In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. The landlord has amended the application and requests half a month's rent for March as the landlord hopes to re-rent the unit. I therefore uphold the landlords claim and award a Monetary Order for a loss of rental income for March to the sum of **\$260.00** pursuant to s. 67 of the *Act*.

I refer the parties to s. 32 of the *Act* which states:

A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I find from the documentary evidence provided by the landlord such as photographs showing the dog feces and urine soaked snow that the tenant has not complied with this section of the *Act* and the landlord had to remove the dog feces and urine soaked snow. I therefore find the landlords claim for \$100.00 to be reasonable considering the many times the landlord has testified that she had to go to the unit to perform this work. The landlord has therefore established a claim for **\$100.00** and will receive a Monetary Order pursuant to s. 67 of the *Act*.

Due to the timing of the hearing and the tenants moving from the rental unit it is my decision that the landlord is at liberty to file a new application for any damage or cleaning to the unit, site or property.

I ORDER the landlord to keep the tenants security deposit of **\$275.00** pursuant to s. 38(4)(b) of the Act. This sum has been offset against the landlord's monetary claim.

As the landlord has been successful with this amended claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following sum:

Unpaid rent and loss of income	\$780.00
Removal of dog feces and urine	\$100.00
Filing fee	\$50.00
Less security deposit	(-\$275.00)
Total amount due to the landlord	\$655.00

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$655.00**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

The landlord's application for a Monetary Order for damage to the unit, site or property is dismissed **with leave** to reapply.

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 07, 2013

Residential Tenancy Branch

