



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CROSBY PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession and Monetary Order for unpaid rent; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

I amended the application to exclude a respondent that was not named as a tenant on the tenancy agreement but was identified as an occupant only.

I confirmed that the tenant has since returned possession of the rental unit to the landlord. Thus, an Order of Possession is no longer needed and I do not provide one with this decision. The remainder of this decision deals with the landlord's monetary claims against the tenant.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent in the amount claimed?
Is the landlord authorized to retain the security deposit?

Background and Evidence

The parties provided consistent evidence that the tenant was required to pay rent of \$1,150.00 on the 1st day of every month for a fixed term set to expire February 28, 2013. It was undisputed that the tenant vacated the rental unit on February 16, 2013.

I noted that the written tenancy agreement does not indicate when the tenancy commenced but indicates it was signed February 23, 2013. The landlord was uncertain

as to when the tenancy commenced as the tenancy formed under a former landlord. The tenant testified that the tenancy for this particular rental unit started in February 2012.

I also noted that the tenancy agreement indicates nothing was paid for a security deposit although both parties agreed that the landlord is holding a security deposit of \$575.00.

It was undisputed that the landlord issued two 10 Day Notices to End Tenancy for Unpaid Rent (the Notice(s)) upon the tenant. The first Notice is dated January 8, 2013 and indicates the tenant failed to pay rent of \$1,150.00 on January 1, 2013. The second Notice is dated February 6, 2013 and indicates \$1,900.00 in rent was outstanding as of February 1, 2013.

The landlord testified that the tenant failed to pay rent of \$1,150.00 for October 2012 and \$1,150.00 for February 2013 and had a previous outstanding balance of \$300.00 to \$500.00 September 2012 most likely.

The tenant testified that she paid only \$400.00 of January 2013 rent in mid-January 2013, leaving a balance of \$750.00, and did not pay any rent for the month of February 2013. The tenant was in agreement that she owed \$1,900.00 in rent as indicated on the 10 Day Notice issued February 6 2013. The tenant denied that she owed rent for October 2012 or previous months and although the landlord had brought this up to her before, the landlord could not provide evidence of rental arrears.

The landlord acknowledged that she took over management in November 2012 and that only recently did she obtain the tenant's ledger from the former landlord. The ledger was not provided as evidence. Nor could the landlord explain how she arrived at the amount of \$2,650.00 that is claimed on the landlord's Application for Dispute Resolution.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

In this case, the landlord bears the burden to prove the tenant owes the amount claimed by the landlord. Considering the landlord could not provide an explanation as to how

the amount claimed was calculated I find the landlord has not met its burden to establish an entitlement to that amount.

I found the landlord's verbal testimony to be unclear and inconsistent with the documentary evidence presented to me, namely the 10 Day Notices, and I was not provided corroborating evidence such as the ledger to which the landlord referred. Even if the ledger prepared by the former landlord was presented as evidence I would have serious reservations about its accuracy considering the tenancy agreement prepared by the former landlord was incomplete and inaccurate in multiple key areas. In contrast, I found the tenant's testimony clear and consistent with the documentary evidence provided by the landlord. Therefore, on the balance of probabilities, I find the tenant owes the landlord \$1,900.00 in rent and I award that amount to the landlord. .

I further award the landlord the filing fee paid for this application. I authorize the landlord to retain the security deposit in partial satisfaction of the unpaid rent.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent	\$ 1,900.00
Filing fee	50.00
Less: security deposit	<u>(575.00)</u>
Monetary Order	\$ 1,375.00

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as an Order of the court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,375.00 to serve upon the tenant and enforce as necessary.

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 13, 2013

Residential Tenancy Branch

