



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AKM Property Investment
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MND, MNR, FF, CNR, CNC, RP

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). Landlord SK applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit, site or property pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for the following remedies against both landlords noted above:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order to the landlords to make repairs to the rental unit pursuant to section 33.

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 parties agreed that Landlord SK (the landlord) handed the tenant the 1 Month Notice on March 5, 2013 and the 10 Day Notice on March 14, 2013. I am also satisfied that the parties served one another with their respective applications for dispute resolution and were prepared to address the issues raised in their applications at this hearing.

The parties agreed that the tenant vacated the rental premises and returned her keys to the landlord on April 2, 2013. As such, the tenant withdrew her application for dispute resolution as this tenancy has ended. For similar reasons, the landlord's agent (the agent) withdrew the landlord's application for an Order of Possession. The issues that remained were the landlord's claim for unpaid rent and recovery of her filing fee.

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

This tenancy commenced as a one-year fixed term tenancy for a manufactured home on the landlords' manufactured home pad site on September 1, 2011. The tenant signed a new periodic tenancy agreement as of September 1, 2012. Monthly rent by the end of this tenancy was set at \$450.00, payable in advance on the first of each month.

The landlord applied for a monetary award of \$900.00, for unpaid rent for March and April 2013. The tenant did not dispute the agent's claim that she did not pay any rent for either March or April 2013.

Analysis

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. There is undisputed evidence that the tenant did not pay any rent for March or April 2013, and vacated the rental unit on April 2, 2013. I find the landlord is entitled to a monetary award of \$450.00 for March 2013.

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.

The agent testified that she understood that the landlord placed a sign on the manufactured home during the third week of March 2013, indicating the pending availability of the manufactured home for prospective renters. She provided no other evidence of any attempt by the landlord to mitigate the tenant's losses for April 2013. The tenant testified that the landlord is planning to try to sell the manufactured home and made little effort to re-rent the premises for April 2013.

Based on the evidence before me, I am not satisfied that the landlord has provided sufficient evidence to demonstrate a genuine attempt to mitigate the tenant's losses for April 2013. I find that the landlord's posting of a sign on the manufactured home does not satisfy the responsibility of the landlord to comply with section 7(2) of the *Act*.

As there is undisputed evidence that the tenant did remain in possession of the rental unit for the first two days of April 2013, I allow the landlord a monetary award of \$30.00 (i.e., $\$450.00 \times 2/30 = \30.00) in unpaid rent for April 2013.

As the landlord has been successful in this application, I allow the landlord to recover her \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in Landlord SK's favour under the following terms, which allows her to recover unpaid rent and her filing fee:

Item	Amount
Unpaid March 2013 Rent	\$450.00
Unpaid April 2103 Rent	30.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$530.00

Landlord SK is provided with these Orders in the above terms and the tenant must be served with this Order 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 tenant's application and the landlord's application for an Order of Possession are 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: April 22, 2013

Residential Tenancy Branch

