



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to ask questions of one another.

Preliminary Matters

The tenant confirmed that the landlord handed her a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on March 15, 2013. Neither party entered into written evidence a copy of the 10 Day Notice. The tenant also confirmed that the landlord handed her a copy of his dispute resolution hearing package for this hearing on or about March 25, 2013. I am satisfied that the landlord served the tenant with the above documents in accordance with the *Act*.

Both parties agreed that the tenant vacated the rental unit by March 31, 2013, and the landlord now has possession of her rental unit. As such, the landlord withdrew his application for an Order of Possession. The landlord's application for an Order of Possession is withdrawn.

The landlord also reduced the amount of his requested monetary award from \$825.00 to \$375.00, the amount of unpaid rent that he maintained was owed by the tenant for March 2013.

At the commencement of the hearing, the tenant said that she had been hoping to attend this hearing with a representative of an advocacy agency. Although that agency

had been unable to provide the tenant with an advocate to assist her with this teleconference hearing, the tenant said that she understood that this tenancy was not covered by the *Act* because she shared accommodation with the landlord.

Both parties agreed that the landlord is not the owner of the property, as he has rented space in this rental property from the owner who lives abroad. The parties also agreed that the landlord rented part of his space to the tenant and shared some common areas with her during her tenancy. I advised the parties that the *Act* (section 4(c) of the *Act*) excludes tenancies where the owner of the property shares kitchen or bathroom facilities with a tenant. As that is not the case with respect to this tenancy because the landlord does not own this rental property, I informed the parties that the landlord's application for dispute resolution properly falls within the jurisdiction of the *Act*.

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 periodic tenancy for part of the rental premises rented by the landlord from the owner of this property commenced on November 1, 2012. Monthly rent was set at \$450.00, payable in advance on the first of each month. The parties agreed that the landlord received \$75.00 of this monthly amount as a direct subsidy from an agency that partially subsidizes the tenant's shelter needs. The tenant's portion of each month's rent was \$375.00.

The tenant testified that she withheld \$100.00 from her March 2013 rent because the landlord refused to provide her with sufficient heat. She said that she asked the landlord to sign a document confirming his consent to let her retain this portion of her rent for the inadequacy of the heat. She said that the landlord refused her request to sign this document. She confirmed that she never had the landlord's agreement to withhold a portion of her rent for lack of heat. The landlord testified that he had not agreed to let her withhold any portion of her monthly rent.

The tenant testified that she paid the remaining \$275.00 of her portion of her March 2013 rent to the landlord. She said that she asked the landlord for rent receipts, but he refused to give her receipts. The landlord confirmed that the only receipt he gave the tenant during this tenancy was for December 2012. He said that he gave her that receipt because she specifically requested a receipt for that payment. As he claimed that she did not request any further receipts and was late in paying her rent, he testified that he did not issue her receipts after December 2012.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the burden of proof rests with the person making the claim for a monetary award, the landlord.

The landlord provided no written evidence to support his claim for a monetary award. He testified that he discontinued giving the tenant receipts for her rental payments shortly after this tenancy began because she was not paying her rent on time. The landlord testified that the only portion of the March 2013 rent he received for this tenancy was the \$75.00 subsidized payment from the agency that was providing the tenant with rental subsidy assistance. The tenant testified that she paid \$275.00 to the landlord, but he refused to issue her a rent receipt.

When there are disputes as to whether or not a tenant paid her rent, a tenant ledger or rent receipts are very helpful in determining a tenant's rent payments. The landlord's failure to provide any written record of the tenant's payments or issue receipts to the tenant for most of this tenancy places the landlord in a difficult position in refuting the tenant's claim that she paid all but \$100.00 of her March 2013 rent.

Under these circumstances, I find that the sole undisputed evidence regarding the non-payment of rent for March 2013 was the tenant's sworn testimony that she withheld \$100.00 from her March 2013 rent. As I find that the tenant had no legal authority to arbitrarily withhold any portion of her scheduled rent payment for this tenancy, I find that the landlord is entitled to a monetary award of \$100.00. I dismiss the remainder of the landlord's application for a monetary award for unpaid rent without leave to reapply. I do so as I find that the landlord has failed to meet the burden of proof in providing any record of the payments received and receipts provided during this tenancy.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's \$50.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has had very limited success in his application, I dismiss the landlord's application for the recovery of his filing fee without leave to reapply.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and to retain the tenant's security deposit:

Item	Amount
Unpaid March 2013 Rent	\$100.00
Less Security Deposit	-50.00
Total Monetary Order	\$50.00

The landlord 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 landlord's application for an Order of Possession is withdrawn.

This final and binding decision and Order 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 23, 2013

Residential Tenancy Branch

