



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nelson Realty Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for unpaid rent or utilities, for authorization to retain the tenant's security deposit, and to recover the filing fee.

The agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant did not attend the hearing. As a result, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The agent testified that the tenant was served with the Notice by registered mail on February 12, 2013. The agent provided a registered mail tracking number in evidence and confirmed that the name and address for the tenant on the registered mail package which contained the landlord's evidence, matched the name and address of the tenant at the rental unit address and that the tenant was still residing at the rental unit as of the date the registered mail package was mailed. The agent stated that he also served the tenant personally at the rental unit address on February 12, 2013 at 5:00 p.m. I find the tenant to have been sufficiently served under the *Act* with the Notice and landlord's evidence.

Preliminary and Procedural Matters

During the hearing, the agent requested to reduce the monetary claim against the tenant to reflect the actual amount of unpaid utilities owed by the tenant, and to incorporate a verbal agreement made with the tenant on February 12, 2013 regarding work the tenant completed for the landlord at the rental unit. The landlord's original claim was for \$1,835.00 comprised of unpaid rent of \$600.00 for February 2013,

\$600.00 for March 2013, \$585.00 for unpaid utilities, plus the \$50.00 filing fee. The agent stated that the original estimate of unpaid utilities ended up being an actual amount of \$192.29 as the agent received an e-mail dated May 2, 2013 just prior to the start of the hearing, from the local city utility company confirming that the unpaid utilities were \$192.29.

Furthermore, the agent testified that on February 12, 2013, he made a verbal agreement with the tenant that if the tenant installed laminate flooring provided by the landlord, the landlord would forgive the \$1,200.00 in rent owed by the tenant as compensation for the tenant's labour. The agent stated that the tenant completed a portion of the agreed upon work, however, he did leave a portion of the work incomplete. The agent testified that he had to hire a contractor for \$213.92 to complete the remainder of the work that the tenant failed to complete.

As a result of the above adjustments, the agent requested to reduce the monetary claim from \$1,835.00 to \$406.21, before the filing fee. As a reduction in the monetary claim against the tenant does not prejudice the tenant, the agent's request to reduce the monetary claim from \$1,835.00 to \$406.21 before the filing fee, is granted.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A month to month tenancy began on December 7, 2012. Monthly rent in the amount of \$600.00 was due on the first day of each month. The tenant paid a security deposit of \$300.00 at the start of the tenancy, which the landlord continues to hold.

The agent stated that on February 7, 2013 the tenant texted him that he would be leaving the rental unit on February 15, 2013. The agent stated that the tenant did not vacate the rental unit until February 23 or 24, 2013. The tenant also failed to return the rental unit keys to the landlord. The agent alleged that the tenant failed to provide proper notice to the landlord when ending a month to month tenancy as required by the *Act*.

The agent submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") in evidence dated February 8, 2013, which indicates that unpaid rent of

\$600.00 was due on February 1, 2013. According to the 10 Day Notice, it was posted to the tenant's door on February 8, 2013.

On February 12, 2013, the agent made a verbal agreement with the tenant that if the tenant installed laminate flooring provided by the landlord, the landlord would forgive the rent owing of \$600.00 for February 2013 and the loss of rent of \$600.00 for March 2013 resulting from the lack of proper Notice under the *Act*, which totals \$1,200.00. The agent stated that the tenant completed a portion of the work; however left the job incomplete as described above.

The agent stated that after the tenant vacated the rental unit, the landlord completed small repairs to the rental unit and began to advertise the rental unit as of February 28, 2013. The agent stated that new tenants moved into the rental unit on April 21, 2013.

The agent stated that the tenant has failed to provide the landlord with his forwarding address. The landlord is seeking \$213.92 comprised of the balance owing of unpaid rent, \$192.29 for unpaid utilities, and the \$50.00 filing fee.

Analysis

Based on documentary evidence and undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

Claim for unpaid rent for February 2013 and loss of rent for March 2013 – The agent for the landlord testified that the tenant failed to pay February 2013 rent in the amount of \$600.00, and that due to the tenant failing to provide proper notice under the *Act* when ending a month to month tenancy, the landlord suffered a loss of rent of \$600.00 for March 2013.

Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, **I find** that the tenant failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. **I find** the landlord has met the burden of proof by establishing a monetary claim of **\$600.00** for unpaid rent for February 2013.

Section 45 of the *Act* states:

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[emphasis added]

The tenant texted the landlord on February 7, 2013 stating that he would be vacating the rental unit on February 15, 2013. The tenant breached section 45 of the *Act* by failing to provide notice in accordance with section 52. Furthermore, a notice issued on February 7, 2013 would not take effect until March 31, 2013. As a result, **I find** the landlord suffered a loss of rent for March 2013 in the amount of **\$600.00** due to the tenant breaching section 45 of the *Act*.

Although the landlord established a claim of \$1,200.00 for unpaid rent and loss of rent, the agent stated that the tenant did comply with a portion of their verbal agreement by completing a portion of the laminate flooring installation. According to the agent, a contractor was hired for \$213.92 to finish the job that the tenant failed to complete as per the verbal agreement with the tenant. Therefore, **I find** the \$1,200.00 in unpaid rent and loss of rent is reduced to **\$213.92** given that the tenant was provided a credit for the portion of the work the tenant did complete for the landlord.

Landlord's claim for unpaid utilities – The landlord testified that he received an e-mail on the day of the hearing from the local city utility company who confirmed that the actual amount of unpaid utilities that the tenant owed was \$192.29. I accept the agent's undisputed testimony that the tenant failed to pay \$192.29 in utilities. **I find** the landlord has met the burden of proof and is entitled to compensation of \$192.29 for the unpaid utilities.

The tenant's security deposit of \$300.00 has accrued no interest since the start of the tenancy. The agent stated that the tenant failed to provide his forwarding address.

As the landlord was successful with their application, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$456.21** comprised of \$213.92 in unpaid rent which is the final balance owing after a credit to the tenant for work the tenant performed for the landlord less the amount the landlord had to pay a contractor to complete the work agreed upon, \$192.29 in unpaid utilities, and \$50.00 for the filing fee. This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit. **I authorize** the landlord to retain the tenant's full security deposit of \$300.00 in partial satisfaction of the claim and **I grant** the landlord a monetary order under section 67 for the balance due of **\$156.21**.

Conclusion

I find that the landlord has established a total monetary claim of \$456.21. **I authorize** the landlord to retain the tenant's full security deposit of \$300.00 in partial satisfaction of the claim and **I grant** the landlord a monetary order under section 67 for the balance due of **\$156.21**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: May 02, 2013

Residential Tenancy Branch