



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Crosby Property Management
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with a review hearing of the landlord's original Application for Dispute Resolution, seeking an order of possession for unpaid rent, a monetary order for unpaid rent, for authorization to keep all or part of the security deposit, and to recover the filing fee.

On May 09, 2013, an Arbitrator issued a decision dismissing the landlord's application with leave to reapply as neither the landlord or the tenant attended the original hearing. The landlord applied for a review of the May 09, 2013 decision citing that the landlord was unable to attend the hearing due to technological problems with the teleconference system.

On May 28, 2013, another Arbitrator ordered a new hearing to be convened.

An agent for the landlord (the "agent") attended the review hearing. As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing was considered. The agent testified that the tenant was served with the Notice of the Review Hearing in person on June 1, 2013 at 11:00 a.m. at the rental unit. The agent stated that later on June 1, 2013 at approximately 6:00 p.m., the tenant vacated the rental unit.

The agent stated that the tenant was served with the original evidence package by registered mail on April 12, 2013 to the rental unit address. The agent submitted a registered mail tracking number in evidence. According to the agent, the registered mail package was returned to the landlord as "unclaimed". I find the tenant was sufficiently served with Notice of the Review Hearing and the original evidence package under the *Act*.

Preliminary and Procedural Matters

At the outset of the hearing, the agent withdrew their request for an order of possession as the tenant vacated the rental unit on June 1, 2013. The agent also withdrew their request to claim towards the security deposit as a security deposit was never paid by the tenant during the tenancy.

The agent also requested to amend his monetary claim from \$3,234.70 to \$3,850.00 as the tenant paid a total of \$1,550.00 towards unpaid rent, however, failed to pay May 2013 and June 2013 rent since filing their application. I find the tenant would be aware when rent was due pursuant to the tenancy agreement. Therefore, I grant the landlord's request to amend their monetary claim to \$3,850.00 to include May 2013 and June 2013 rent as that would not prejudice the tenant.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A fixed term tenancy began on March 1, 2013 and was to revert to a month to month tenancy after February 28, 2014. Monthly rent in the amount of \$1,275.00 plus \$75.00 for parking was due on the first day of each month. The tenant failed to pay a security deposit during the tenancy.

On April 4, 2013, the agent stated that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was posted to the tenant's door. The 10 Day Notice submitted in evidence is dated April 4, 2013 and indicates that \$1,275.00 was due on April 1, 2013. The agent stated that the tenant advised him several times that he would be vacating the rental unit in April and in early May but failed to do so. As a result, the agent stated that he could not rely on the promises of the tenant that he would pay the owing rent and vacate the rental unit.

The agent stated that the tenant made a total of \$1,550.00 in three payments as follows:

- \$700.00 on April 15, 2013
- \$350.00 on May 1, 2013
- \$500.00 on May 7, 2013

The landlord is claiming \$3,850.00 as follows:

March 2013 rent	\$1,275.00
March 2013 parking fee	\$75.00
April 2013 rent	\$1,275.00
April 2013 parking fee	\$75.00
<i>(Less credit of \$700.00 partial payment by tenant on April 15, 2013)</i>	<i>-\$700.00</i>
May 2013 rent	\$1,275.00
May 2013 parking fee	\$75.00
<i>(Less credit of \$350.00 partial payment by tenant on May 1, 2013)</i>	<i>-\$350.00</i>
<i>(Less credit of \$500.00 partial payment by tenant on May 7, 2013)</i>	<i>-\$500.00</i>
June 2013 rent	\$1,275.00
June 2013 parking fee	\$75.00
TOTAL OWING BY TENANT AFTER CREDITS	\$3,850.00

The agent testified that the tenant paid a total of \$1,550.00 however still owes \$3,850.00 as described in the table above. The agent stated that on June 1, 2013 after the tenant vacated the rental unit at approximately 6:00 p.m., the landlord began to advertise the rental unit, however, the landlord has not been successful in finding a new tenant to rent the rental unit. The agent stated that tenant breached the fixed term tenancy agreement by failing to pay rent when it was due.

Analysis

As the original decision resulted in the landlord's application being dismissed with leave to reapply, I set aside the original May 09, 2013 decision and by way of this review hearing decision make the following findings based on the undisputed testimony of the agent, and on the balance of probabilities.

The agent stated that the 10 Day Notice submitted in evidence and dated April 4, 2013 was posted to the tenant's door on April 4, 2013. Section 90 of the *Act* states that documents served in this matter are deemed served three days later which makes the deemed service date April 7, 2013. The effective vacancy date on the 10 Day Notice is listed as April 14, 2013 which automatically corrects under the *Act* to April 17, 2013. The tenant did not dispute the 10 Day Notice or pay the required rent of \$1,275.00 within five

days of receiving the 10 Day Notice. Therefore, pursuant to section 46 of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the corrected effective vacancy date of April 17, 2013. The agent stated that the tenant vacated the rental unit on June 1, 2013 and that the landlord has been advertising the rental unit since, however, has been unable to find a new tenant for June 2013, having been advised in April and May that the tenant would vacate the rental unit and failed to do so.

Landlord's claim for unpaid rent and parking fees – The agent testified that the tenant paid \$1,550.00 during the tenancy via three payments but continues to owe a total of \$3,850.00 as described above. Section 26 of the *Act* requires that a tenant pay rent on the date that it is due in accordance with the tenancy agreement which, in the matter before me, is the first day of each month. **I find** the tenant breached section 26 of the *Act* by failing to pay rent on the first day of each month and has failed to pay the total amount of \$3,850.00 as claimed by the landlord. This amount is comprised of unpaid rent and parking fees less the \$1,550.00 paid by the tenant.

I find the tenant breached a fixed term tenancy and is therefore responsible for the full month of rent for June 2013 as the landlord advertised the rental unit but has not been successful in re-renting the rental unit after the tenant vacated on June 1, 2013. Therefore, **I find** the landlord has met the burden of proof and is entitled to **\$3,850.00** in unpaid rent and parking fees.

As the tenant failed to pay a security deposit, **I find** there is no security deposit to address in my decision.

As the landlord's claim had merit, **I grant** 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 **\$3,900.00** comprised of \$3,850.00 in unpaid rent and parking fees and the \$50.00 filing fee. **I grant** the landlord a monetary order pursuant to section 67 in the amount of **\$3,900.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlord has established a total monetary claim in the amount of \$3,900.00 comprised of \$3,850.00 in unpaid rent and parking fees and the \$50.00 filing fee. I grant the landlord a monetary order pursuant to section 67 in the amount of

\$3,900.00. This order 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: June 20, 2013

Residential Tenancy Branch

