



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Leonic Investments Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MND 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") for an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for authorization to keep all or part of the security deposit, and to recover the filing fee.

An agent for the landlord (the "agent") attended the teleconference hearing. During the hearing the agent was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The agent testified that the Notice of Hearing and evidence was served on the tenant by registered mail on July 23, 2013. The agent stated that the registered mail package was addressed to the tenant and the addressed to the tenant's rental unit. The agent provided a registered mail tracking number orally during the hearing. The agent stated that he also served the tenant personally with the Notice of Hearing and evidence on July 25, 2013, which was witnessed by third party, MD. MD was not available to provide witness testimony and there were no documents submitted in evidence which support that MD was present when the agent served the tenant personally on July 25, 2013. Based on the above, I find that the agent served the tenant by registered mail on July 23, 2013. Documents served by registered mail are deemed served five days later under the *Act*. Therefore, I find the tenant was deemed served with the Notice of Hearing and evidence as of July 28, 2013.

Preliminary and Procedural Matters

At the outset of the hearing, the agent testified that the tenant vacated the rental unit on August 10, 2013, since filing the application. As a result, the agent requested to withdraw the landlord's request for an order of possession as the tenant had already returned possession of the rental unit by vacating the rental unit on August 10, 2013. As a result of the above, I will not consider the landlord's request for an order of possession.

The agent also requested to withdraw the damages portion of the landlord's monetary claim. Based on the above, I will not consider the landlord's claim for damages, and will consider only the landlord's claim for \$425.00 as the unpaid portion of July 2013 rent, a late fee of \$25.00 for July 2013, a loss of rent of \$850.00 for August 2013, and the landlord's request for the recovery of the \$50.00 filing fee. The landlord is at liberty to reapply for damages, however, I note that withdrawing their monetary claim for damages does not extend any time limits under the *Act*.

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 agreement between the parties began on August 1, 2012 and ended on July 31, 2013. The written tenancy agreement submitted in evidence supports that both parties initialled the area of the tenancy agreement which reads "At the end of (July 31, 2013), the tenancy is ended and the tenant must vacate the rental unit." The tenant did not vacate the rental unit until August 10, 2013. Monthly rent in the amount \$850.00 was due on the first day of each month during the tenancy. The tenant paid a \$425.00 security deposit at the start of the tenancy, which the landlord continues to hold.

The landlord applied for dispute resolution on July 22, 2013, after a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated July 2, 2013 and served on the tenant on July 2, 2013 by posting the 10 Day Notice on the tenant's door of the rental unit, which was witnessed by the agent. The 10 Day Notice has an effective vacancy date of July 15, 2013. Documents served by posting to the door are deemed served under the *Act*, on the third day after they are posted. The 10 Day Notice was

deemed served as of July 5, 2013 which confirms the effective vacancy date as July 15, 2013.

The landlord is seeking a monetary order in the amount of \$1,350.00 comprised of the following:

Item Description	Amount
1. Unpaid portion of July 2013 rent	\$425.00
2. Late fee for July 2013 rent	\$25.00
3. Loss of rent for August 2013	\$850.00
4. Recovery of filing fee	\$50.00
TOTAL MONETARY CLAIM	\$1,350.00

The agent provided undisputed testimony confirming the amounts described in the table above. Section 10 of the tenancy agreement submitted in evidence which was signed by the parties, supports that the tenant was aware that all late payments of rent would be subject to a fee of \$25.00.

The agent testified that the tenant did not dispute the 10 Day Notice or pay the amount listed on the 10 Day Notice within five days of receiving the 10 Day Notice. The amount listed as owed by the tenant on the 10 Day Notice is \$450.00 due July 1, 2013. The agent testified that \$450.00 is comprised of a \$425.00 portion of rent owing for July 2013 and a late fee of \$25.00 for not paying rent by July 1, 2013.

The agent stated that the because the tenant breached the tenancy agreement by failing to vacate the rental unit until August 10, 2013 and did not provide compensation for use and occupancy for August 2013, the landlord has suffered a loss of rent of \$850.00 for the month of August 2013.

The landlord submitted a copy of the two-page 10 Day Notice, proof of service document, and the tenancy agreement in evidence to support their application.

Analysis

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

Monetary claim of landlord – The agent testified that the tenant failed to pay \$425.00 in rent for July 2013, and that he suffered a loss of rent for August 2013 in the amount

of \$850.00 due to the tenant breaching the *Act* by failing to vacate on July 31, 2013 as per the fixed term tenancy agreement which required vacant possession of the rental unit as of July 31, 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** the tenant breached section 26 of the *Act* by failing to pay \$425.00 in rent for July 2013 and breached the fixed term tenancy agreement by failing to vacate the rental unit by July 31, 2013, having waited until August 10, 2013 before the tenant vacated the rental unit. Therefore, **I find** the landlord also suffered a loss of rent for August 2013 in the amount of \$850.00 as the tenant did not vacate the rental unit until August 10, 2013 which did not leave the landlord a reasonable amount of time to secure a new tenant for the month of August 2013 due to the tenant breaching the *Act*. Finally, **I find** the tenant is responsible to pay the late fee of \$25.00 due to July 2013 rent being late, and to which \$425.00 remains owing by the tenant. Section 10 of the tenancy agreement clearly states that a late fee of \$25.00 will be charged for all late payments. Therefore, **I find** the landlord has met the burden of proof and **I grant** the landlord \$1,300.00 comprised of \$425.00 owing for July 2013 rent, \$850.00 for the loss of August 2013 rent, and the \$25.00 late fee for paying a portion of July 2013 late.

As the landlord's application had merit, **I grant** the landlord the recovery of the \$50.00 filing fee.

Monetary Order – I find that the landlord has established a total monetary claim of **\$1,350.00** comprised of \$1,300.00 in unpaid rent, loss of rent, and a late fee, plus the \$50.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit, which the landlord continues to hold, in the amount of \$425.00, which has accrued \$0.00 in interest to date.

I authorize the landlord to retain the tenant's full security deposit of \$425.00 in partial satisfaction of the landlord's monetary claim, and **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$925.00**. 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.

Conclusion

I find that the landlord has established a total monetary claim of \$1,350.00 as indicated above. I authorize the landlord to retain the tenant's full security deposit of \$425.00 in partial satisfaction of the claim, and I grant the landlord a monetary order under section

67 for the balance due of \$925.00. 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: August 27, 2013

Residential Tenancy Branch

