



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC 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 authorization to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The landlord attended the teleconference hearing. During the hearing the landlord 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 landlord testified that the Notice of Hearing was served on the tenant in person at the tenant's place of employment, BP, on July 16, 2013 at 2:15 p.m. and that his wife was present to witness the personal service on the tenant on July 16, 2013. I accept the landlord's undisputed testimony that he served the tenant at her place of employment on July 16, 2013 and that she was sufficiently served as of that date under the *Act* as a result.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord testified that the tenant vacated the rental unit on July 29, 2013, since filing his application. As a result, the landlord requested to withdraw their request for an order of possession as the tenant had already given up possession of the rental unit by vacating the rental unit on July 29, 2013.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A month to month tenancy agreement between the parties began on or about June 1, 2012 and ended on July 29, 2013 when the tenant vacated the rental unit. Monthly rent in the amount \$480.00 was due on the first day of each month during the tenancy. The tenant paid a \$240.00 security deposit at the start of the tenancy which the landlord continues to hold.

The landlord applied for dispute resolution on July 15, 2013, after they issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on the tenant dated July 4, 2013 on July 5, 2013 via personal service on the tenant at the rental unit, which was witnessed by the wife of the landlord, LB. The 10 Day Notice has an effective vacancy date of July 14, 2013 which automatically corrects under the *Act* to July 15, 2013.

The landlord is seeking a monetary order in the amount of \$1,440.00 comprised of the following:

Item Description	Amount
1. Unpaid rent for June 2013	\$480.00
2. Unpaid rent for July 2013	\$480.00
3. Loss of rent for August 2013	\$480.00
TOTAL MONETARY CLAIM	\$1,440.00

The landlord provided undisputed testimony confirming the amounts described in the table above. The landlord testified that the tenant did not dispute the 10 Day Notice after being served on July 5, 2013. The amount listed as owed by the tenant on the 10 Day Notice is \$960.00 as of July 1, 2013. The landlord testified that he is seeking loss of August 2013 rent as the tenant did not vacate by July 15, 2013 and did not vacate the rental unit until July 29, 2013. The landlord testified that due to the condition of the rental unit and the timing in July when the tenant vacated near the end of the month, he was not able to begin advertising the rental unit for rent until August 6, 2013 or August

7, 2013 after cleaning the rental unit, and to date, has not been able to find a new tenant for August 2013.

The landlord submitted a copy of the 10 Day Notice and a proof of service document in evidence to support his application.

Analysis

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

Monetary claim of landlord – The landlord testified that the tenant failed to pay \$480.00 in rent for June 2013, \$480.00 in rent for July 2013, and that he suffered a loss of rent for August 2013 in the amount of \$480.00 due to the tenant breaching the *Act*. 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 \$480.00 in rent for June 2013 and \$480.00 in rent for July 2013, as claimed by the landlord. **I find** the landlord also suffered a loss of rent for August 2013 in the amount of \$480.00 as the tenant did not vacate the rental unit until July 29, 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*. Therefore, **I find** the landlord has met the burden of proof and **I grant** the landlord **\$1,440.00** as described above.

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 \$1,490.00 comprised of \$1,440.00 in unpaid rent and loss of rent, 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 \$240.00, which has accrued \$0.00 in interest to date. **I authorize** the landlord to retain the tenant's full security deposit of \$240.00 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 **\$1,250.00**. 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 \$1,490.00 as indicated above. I authorize the landlord to retain the tenant's full security deposit of \$240.00 in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 for the balance due of \$1,250.00. 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 19, 2013

Residential Tenancy Branch

