



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 her filing fee for this application from the tenants 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 cross-examine one another. The tenants confirmed that the landlord handed them 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notices) on June 21, 2013 and July 23, 2013. The tenants confirmed that the landlord's husband handed them a copy of the landlord's dispute resolution hearing package on or about August 14, 2013. I am satisfied that the landlord served the above documents and that the parties served one another with their written and photographic evidence packages in accordance with the *Act*.

At the commencement of the hearing, the parties testified that the tenants vacated the rental unit on August 24, 2013. As the landlord now has possession of the rental unit, the landlord withdrew her application for an end to tenancy and the issuance of an Order of Possession. The landlord's application for an Order of Possession is withdrawn.

At the beginning of the hearing, I noted that much of the tenants' written evidence appeared to outline what appeared to be their own claim for a monetary award against the landlord. At the end of their 8 page submission, the tenants listed the deficient features of their tenancy that they believed entitled them to an offsetting monetary award in excess of \$20,000.00. At the hearing, the male tenant testified that the tenants had not filed their own application for dispute resolution with the Residential Tenancy Branch (the RTB) seeking their own monetary award from the landlord. The landlord

also testified that she had identified additional items where she believed she was entitled to an additional monetary award from the tenants.

I advised the parties that the only matter properly before me at this hearing was the landlord's application for a monetary award for unpaid rent. Although the tenants had included their own list of items for which they believed they were entitled to compensation from the landlord, I informed them that I did not consider the landlord as having been properly informed by the tenants of their intent to pursue a monetary claim of more than double what the landlord had claimed in her own application for unpaid rent. As such, I informed the parties that I would only be considering the landlord's claim for unpaid rent.

The tenants are at liberty to apply for their own monetary award arising out of this tenancy, as is the landlord for any additional losses or damages that became evident once the landlord gained possession of the rental unit.

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 tenants?

Background and Evidence

This tenancy began on or about February 15, 2002, on the basis of a one-year fixed term tenancy agreement. At the expiration of the initial term, the tenancy continued as a periodic tenancy. Monthly rent for the duration of the tenancy remained at \$1,750.00, payable in advance on the first of each month. The landlord continues to hold the tenants' security deposit of \$875.00, plus interest.

In support of the landlord's claim for a monetary award of \$9,950.00, the landlord entered into written evidence a Summary of Monthly Rental Income for this tenancy, which covered the period from November 1, 2010 until August 1, 2013. The landlord's list of months where rent was owed and not paid in full included the following:

Item	Amount
November 2010 Rent	\$1,750.00
December 2010 Rent	1,750.00
October 2011 Rent (\$1,750.00 - \$800.00 = \$950.00)	950.00
November 2011 Rent	1,750.00
December 2011 Rent	1,750.00

January 2012 – Extra \$1,750.00 Paid by Tenants)	-1,750.00
March 2012	1,750.00
April 2012	1,750.00
May 2012 – Extra \$650.00 Paid by Tenants	-650.00
June 2012 – Extra \$650.00 Paid by Tenants	-650.00
July 2012 – Extra \$650.00 Paid by Tenants	-650.00
August 2012 – Extra \$650.00 Paid by Tenants	-650.00
October 2012 – Extra \$650.00 Paid by Tenants	-650.00
January 2013	1,750.00
February 2013	1,750.00
March 1, 2013	1,750.00
March 11, 2013 – Tenants Paid \$5,250.00	-5,250.00
May 2013	1,750.00
June 2013 – Extra \$1,750.00 Paid by Tenants	-1,750.00
July 2013	1,750.00
August 2013	1,750.00
Total of Above Items	\$9,950.00

At the hearing, the landlord testified that after reviewing her records and the copy of a November 19, 2011 receipt entered into written evidence by the tenants, she realized that she had been mistaken in failing to properly record the tenants' \$3,400.00 payment of November 19, 2011. As such, she asked that the amount of her requested monetary award be reduced from \$9,950.00 by \$3,400.00. This reduced the amount of the landlord's requested monetary award to \$6,550.00.

The tenants did not challenge the landlord's account of their payments and the rent owing on the above dates, with the exception of the \$3,400.00 payment now acknowledged as received by the landlord. The tenants' main issue with the amounts requested by the landlord were that they did not believe the landlord provided them with full value for the services and facilities they were expecting to receive when they signed their tenancy agreement. In their written evidence, the tenants cited many features of the rental unit that were allowed to fall into disrepair by the landlord. They claimed that

this disrepair reached such proportions that they should be entitled to a retroactive reduction in rent in the order of 50-80 % during the latter half of their tenancy, in addition to specific expenses they incurred and losses they experienced during this tenancy.

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.

As noted above, I find that the tenants have not submitted their own application for a monetary award for their loss in value of this tenancy. Thus, I find that the landlord has not been given a proper opportunity to respond to what appears to be a very significant claim the tenants intend to initiate. As I find that the tenants remain at liberty to submit their own claim for a monetary award and I cannot consider it in the context of this hearing, my task narrows to whether the tenants did or did not pay rent for the months cited in the landlord's application for dispute resolution.

I find that there is undisputed evidence that the tenants have not been paying their rent in full for many of the months since October 2011. For some of these months, the tenants did make extra payments to the landlord in accordance with an agreement they had worked out, in addition to their regularly scheduled rent payments. They also made large lump sum payments of \$3,400.00 on November 19, 2011 and \$5,250.00 on March 11, 2013.

At the hearing, I advised the parties that I was unlikely to consider the landlord's claim for unpaid rent of \$1,750.00 for November 2010 and \$1,750.00 for December 2010. In providing this observation to the parties, it appeared to me that the landlord had taken far too long to seek redress for this unpaid rent (i.e., over 2 ½ years). However, at the point in this hearing when I made this observation, the landlord had not yet conceded that she had actually received a \$3,400.00 payment from the tenants on November 19, 2011. The landlord also testified that she had never issued any 10 Day Notices to end this tenancy for unpaid rent for either November or December 2010, and had accepted the tenants' regular monthly payments for many months following December 2010.

I have reviewed the landlord's Summary of Monthly Rental Income further and in the context of the landlord's failure to include the tenants' \$3,400.00 payment in her Summary. I find that there is undisputed evidence that the tenants failed to pay \$950.00 of their October 2011 rent and all \$1,750.00 of their November 2011 rent until they made the \$3,400.00 payment to the landlord on November 19, 2011. A total of \$2,700.00 was owed to the landlord from October and November 2011 when the tenants made their \$3,400.00 payment. From these calculations, it would appear that the remaining \$700.00 of the tenants' \$3,400.00 was applied against outstanding rent that the landlord maintained has been owing since November 2010. Under these circumstances, I find that only \$2,700.00 of the tenants' \$3,400.00 can be applied to rent that became owing as of October 2011. The remaining \$700.00 was applied to unpaid rent which at that time had been owing for less than one year. As I find that the landlord is unable to recover any portion of the amounts she claimed have been owing since November and December 2010, I find that the tenants can only be credited for \$2,700.00 of their \$3,400.00 payment, which applies to unpaid rent that has been owing within the last two years of their tenancy.

For the reasons noted above, I first find that the landlord's claim of \$9,950.00 is reduced by \$3,500.00, as I do not find that the landlord is entitled to a monetary award for unpaid rent dating back to November and December 2010. Of the remaining \$6,450.00, I also reduce the landlord's eligible claim by the \$2,700.00 of the tenants' \$3,400.00 payment applied to unpaid rent from October and November 2011. This results in my finding that the landlord is entitled to a monetary award for unpaid rent of \$3,750.00.

As the landlord has been partially successful in this application, I allow her to recover one-half of the \$100.00 filing fee for her application from the tenants.

Although the landlord's application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and one-half of her filing fee and to retain the tenants' security deposit:

Item	Amount
Landlord's Application for a Monetary Award for Unpaid Rent from October 2010 until August 1, 2013 as Submitted	\$9,950.00
Less Requested Rent for November and December 2010 (\$1750.00 + \$1,750.00 = \$3,500.00)	-3,500.00
Less Portion of Tenants' \$3,400.00 Payment of November 19, 2011 Applied to Rent Owing Since October 1, 2011 (\$3,400.00 - \$700.00 = \$2,700.00)	-2,700.00
Less Security Deposit + Interest (\$875.00 + \$30.98 = \$905.98)	-905.98
Recovery of ½ Filing Fee for this Application	50.00
Total Monetary Order	\$2,894.02

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 decision 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: September 19, 2013

Residential Tenancy Branch

