



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP MEDALLION REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution made by the landlord for a Monetary Order for unpaid rent or utilities, to keep all or part of the pet damage or security deposit and to recover the filing fee for the cost of the application from the tenants.

An agent for the landlord and one of tenants appeared for the hearing. The landlord served a copy of the application and Notice of Hearing documents to both tenants by registered mail on July 19, 2013 and provided the Canada Post tracking reports showing that the documents were signed for and received on July 23, 2013. The tenant denied signing for the documents but stated that she had received them much later than July 23, 2013. Section 90 of the Residential Tenancy Act (referred to as the *Act*) states that documents served by registered mail are deemed to have been received five days after such mailing. Based on this, I find that the tenants were served by the landlord in accordance with the *Act*.

Both parties gave affirmed testimony and provided documentary evidence in advance of the hearing, copies of which were served on each other. All the evidence provided was carefully considered in this decision.

Preliminary Issues

At the start of the hearing the landlord claimed that she had amended the application to include carpet damages. However, the application had not been amended to include a claim for damages; therefore, I did not deal with any claim for damages.

The landlord and tenant had previously appeared for a hearing on March 12, 2013. A copy of the decision was provided as evidence for this hearing during which the Arbitrator allowed the landlord to keep the security deposit in partial satisfaction of the landlord's claim. Section 77 of the *Act* states that, except as otherwise provided in the

Act, a decision or an order is final and binding on the parties. Therefore any findings made by an Arbitrator that presided over the prior hearing are not matters that I have any authority to alter and any decision that I render must honour the existing findings. As a result, the portion of the landlord's application relating to the request for an order to retain the security deposit is therefore dismissed as this matter has already been determined in the previous hearing.

The tenant claimed that she was wrongfully evicted by the landlord. It was explained to the tenant that this hearing was not about a claim for wrongful eviction but one of unpaid rent made by the landlord. I have not addressed any other issues in this hearing. However, the tenant is at liberty to seek legal remedy to address this issue.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for Unpaid rent for the months of April, May and June, 2013?

Background and Evidence

Both parties agreed that the tenancy started on October 1, 2012 for a fixed term of one year but ultimately ended with the tenant being evicted on June 17, 2013. The landlord and tenant completed a written tenancy agreement. Rent was payable by the tenant to the landlord in the amount of \$1,500.00 on the 1st day of each month.

The landlord testified that the tenant had failed to pay rent for the months of April and May, 2013 in the amount of \$1,500.00 each, which the landlord seeks to claim from the tenant. The tenant failed to also pay rent for June, 2013. As a result, the landlord testified that she used the Order of Possession which had been issued from a previous hearing on March 12, 2013 to evict the tenant on June 17, 2013. The landlord now also seeks to recover the lost rent for the 17 days of June, 2013 at a cost of \$800.00.

The tenant testified that she had paid rent to the landlord in the amount of \$1,500.00 on March 29, 2013 for April, 2013. The tenant provided a cash receipt she obtained from the landlord for this amount.

The tenant testified that she did not know whether she had paid May, 2013 rent but could only confirm payment if she had a binder which documented past payments which

was not in the items that the bailiffs had moved during the eviction process. The tenant was unable to provide a receipt for May, 2013 rent payment.

In relation to June, 2013 rent, the tenant provided a cash receipt given to her by the landlord for the receipt of \$760.00 towards June, 2013 rent payment. The tenant testified that she could only make a partial payment for this month.

The landlord confirmed receipt of the payments that the tenant had testified to but claimed that this money had been put towards previous rent payments outstanding for which she had already received a Monetary order for on March 12, 2013.

Analysis

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement.

The tenant provided documentary evidence, which was confirmed by the landlord, that she had paid \$1,500.00 for the month of April, 2013 and \$750.00 for June, 2013. As a result, I am satisfied that these amounts were paid by the tenant. The landlord testified that she was claiming these amounts from the tenant because she had applied them to unpaid rent from previous months which were dealt with at a prior hearing on March, 12, 2013 and therefore they were still outstanding.

During this previous hearing, the landlord was successful in obtaining a Monetary Order for unpaid rent relating to the months of December, 2012 and January, February and March, 2013. As the landlord already has a Monetary Order from the previous monetary claim, the landlord is at liberty to enforce the order through the Small Claims Court. However, I am only able to deal with the monetary claim before me and not able to offset them against a previous order issued by the Residential Tenancy Branch.

In relation to the landlord's monetary claim before me, I find that the tenant was unable to prove whether she paid rent for May, 2013 in the amount of \$1,500.00 and I award this amount to the landlord. The tenant testified that she only paid \$760.00 for the month of June, 2013. The landlord only claims \$800.00 for the time the tenant was in the rental unit. As a result, this leaves an outstanding balance of \$40.00 which I also award to the landlord.

As the landlord has been successful in this matter, the landlord is entitled to recover from the tenants the \$50.00 filing fee for the cost of this application. Therefore, the total amount awarded to the landlord is \$1,590.00.

Conclusion

For the reasons set out above, I grant the landlord monetary compensation pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$1,590.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: October 23, 2013

Residential Tenancy Branch

