



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MND 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 damage to the unit, site or property, for authorization to keep all or part of the security deposit and pet damage 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 and a witness for the landlord attended the teleconference hearing. During the hearing the landlord was given the opportunity to provide her 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 and evidence was served on the tenant by registered mail on August 22, 2013. The landlord stated that the registered mail package which included the Notice of Hearing and evidence, including digital evidence, was addressed to the tenant and addressed to the address of the rental unit. The landlord provided a registered mail tracking number orally during the hearing. The landlord stated that the tenant vacated the rental unit on September 16, 2013, however, was still occupying the rental unit until September 16, 2013. The landlord stated that the registered mail package shows as "returned to sender" according to the postal service online registered mail tracking website. Documents served by registered mail are deemed served five days later under section 90 of the *Act*. Therefore, I find the tenant was deemed served with the Notice of Hearing and evidence as of August 27, 2013. I note that refusal or neglect to accept service of registered mail does not constitute grounds for a Review.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord testified that the tenant vacated the rental unit on September 16, 2013, since filing her application. As a result, the landlord requested to withdraw her request for an order of possession as the tenant had already returned possession of the rental unit by vacating the rental unit on September 16, 2013. The landlord is permitted to withdraw that portion of her request as I find that such a request does not prejudice the tenant. Given the above, I will not consider the landlord's request for an order of possession.

The landlord also requested to withdraw the damages portion of her monetary claim. I find that such a request does not prejudice the tenant and as a result, I will not consider the landlord's claim for damages. The landlord is at liberty to reapply for damages, however, I note that withdrawing her monetary claim for damages does not extend any time limits under the *Act*.

The landlord requested to reduce her monetary claim from \$3,900.00 as indicated in her application to \$2,600.00, which is comprised of unpaid rent in the amount of \$1,300.00 for August 2013, and loss of rent of \$1,300.00 for September 2013. I find that a reduction in the landlord's monetary claim does not prejudice the tenant. As a result, I permit the landlord to reduce her monetary claim against the tenant during the hearing.

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 and pet damage deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement between the parties began on May 8, 2010 and reverted to a month to month tenancy after November 8, 2010. Monthly rent at the start of the tenancy was \$1,250.00 per month and due on the first day of each month and was subsequently increased over the course of the tenancy to \$1,300.00 per month as of April 1, 2012. A security deposit of \$625.00 and a pet damage deposit of \$100.00 were paid by the tenant at the start of the tenancy.

The landlord stated that she served two notices on the tenant. The landlord testified that a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) dated July 23, 2013 was served on the tenant by registered mail on July 23, 2013. The landlord stated that the 1 Month Notice was not disputed and had an effective vacancy date of August 23, 2013, which would correct automatically under the *Act* to August 31, 2013. The landlord stated that she also served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated August 12, 2013 on the tenant via personal service on the August 12, 2013. The amount owing listed on the 10 Day Notice was \$1,300.00 due August 1, 2013 and the stated effective vacancy date was listed as August 22, 2013.

The landlord testified that the tenant did not dispute the 10 Day Notice either and did not pay August 2013 rent of \$1,300.00 and that she suffered a loss of rent for September 2013 in the amount of \$1,300.00. The landlord testified that the tenant did not vacate the rental unit in accordance with the two notices and remained in the rental unit until September 16, 2013. The landlord stated that the tenant has not provided his written forwarding address.

The landlord applied for dispute resolution on August 21, 2013, claiming towards the tenant’s security deposit and pet damage deposit. The landlord is also seeking the recovery of her filing fee.

The landlord submitted in evidence a copy of the tenancy agreement, two discs of digital evidence, a rent increase form, a receipt supporting that the tenant owed the remainder of the pet damage deposit after only paying \$100.00 of what was supposed to be a \$650.00 pet damage deposit, the 1 Month Notice, the 10 Day Notice, and proof a service documents.

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 \$1,300.00 for August 2013, and that she suffered a loss of rent for September 2013 in the amount of \$1,300.00 due to the tenant breaching the *Act* by failing to vacate on the effective dates of the undisputed 1 Month Notice and 10 Day Notice. 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 \$1,300.00 for August 2013 rent, and was overholding in the rental unit by failing to vacate before September 2013 rent was due. Therefore, **I find** the landlord also suffered a loss of rent for September 2013 in the amount of \$1,300.00 as the tenant did not vacate the rental unit until September 16, 2013 which did not leave the landlord a reasonable amount of time to secure a new tenant for the month of September 2013 due to the tenant breaching the Act.

Based on the above, **I find** the landlord has met the burden of proof has established a monetary claim of \$2,600.00 comprised of \$1,300.00 owing for August 2013 rent, and \$1,300.00 for loss of September 2013 rent.

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 **\$2,650.00** comprised of \$2,600.00 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 of \$625.00 and pet damage deposit of \$100.00, which the landlord continues to hold, in the total amount of \$725.00 in combined deposits, which has accrued \$0.00 in interest to date.

I authorize the landlord to retain the tenant's full security deposit of \$625.00 and pet damage deposit of \$100.00 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 **\$1,925.00**. 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 \$2,650.00 as indicated above. I authorize the landlord to retain the tenant's full security deposit of \$625.00 and pet damage deposit of \$100.00 in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 for the balance due of \$1,925.00. 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: October 15, 2013

Residential Tenancy Branch

