



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes 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"). The landlord applied for a monetary order for unpaid rent or utilities, for authorization to retain the tenant's 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 tenant, an advocate for the tenant, and two agents for the landlord (the "agents") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The tenant testified that she received the landlord's evidence and that she had the opportunity to review the landlord's evidence prior to the hearing. The tenant's evidence was excluded from the hearing as it was submitted late, and not in accordance with the rules of procedure. I find the tenant to have been sufficiently served under the *Act* with the landlord's evidence.

Preliminary and Procedural Matters

During the hearing, the tenant did not call upon her sister who she named as a witness at the start of the hearing. As a result, the tenant's sister, "MB" has not been included in the style of cause as there were no witnesses presented by either party who provided testimony during the hearing.

In addition, during the hearing, the agents for the landlord agreed with the tenants' advocate that the notice of rent increase dated March 8, 2013, which became effective July 1, 2013, contained a mathematical error, and instead of rent being \$752.55, the

actual rent should have been the original amount of rent, \$695.00 plus \$27.55 for a total of \$722.55 and not \$752.55 as listed in the notice of rent increase. As a result, the agents requested to reduce the landlord's monetary claim for loss of rent for October 2013 from \$752.55 to \$722.55, plus the recovery of the filing fee, less the tenant's security deposit which is being claimed towards the unpaid rent for October 2013.

I find that a reduction in the monetary claim against the tenant does not prejudice the tenant, and the agent's request to reduce their claim from \$752.55 to \$722.55 as noted above, is permitted as a result. As the tenant has not made an application that is before me regarding the mathematical error noted above in the notice of rent increase dated March 8, 2013, I will only be considering the landlord's reduced claim for unpaid rent for the month of October 2013 in the amount of \$722.55, and the landlord's claim towards the tenant's security deposit towards their claim for unpaid rent.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

The parties agreed that a fixed term tenancy agreement began on March 1, 2012 and reverted to a month to month tenancy after February 28, 2013. Monthly rent in the amount of \$695.00 was due on the first day of each month at the start of the tenancy and as described above, was increased during the course of the tenancy. The tenant paid a security deposit of \$347.50 at the start of the tenancy, which the landlord continues to hold.

The agents stated that on October 16, 2013, they received a letter from the tenant dated September 1, 2013, indicating that the tenant would be vacating the rental unit on September 30, 2013. The tenant alleged that the agents knew on September 5, 2013 that she had placed her notice to vacate in a "mailbox", however, the tenant confirmed that the "mailbox" was not listed as the service address for the landlord on the tenancy agreement.

The parties agreed that the tenant vacated the rental unit on September 28, 2013. The landlord is seeking unpaid rent for the month of October 2013 as the cheque issued by the tenant was returned as NSF.

Analysis

Based on documentary evidence and testimony provided during the hearing, and on the balance of probabilities, I find the following.

Claim for unpaid rent October 2013 – Even if I were to accept the tenant's version that the landlord knew about her 1 Month Notice to End Tenancy on September 5, 2013 which was dated September 1, 2013, **I find** the tenant breached section 45 of the *Act* as a result. Section 45 of the *Act* states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

[emphasis added]

As noted above, as the rent is due on the first day of each month, for the tenant's notice to be effective at the end of September 2013, it would have had to have been dated and served on the landlord before the end of August 2013, which it was not. The tenant was not authorized to end the tenancy any earlier than October 31, 2013 based on her written notice to end tenancy dated September 1, 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** that the tenant failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. **I find** the landlord has met the burden of proof by establishing a monetary claim of **\$722.55** for unpaid rent for the month of October 2013.

The landlord continues to hold the tenant's security deposit of \$347.50 which has accrued no interest since the start of the tenancy.

As the landlord was successful with their application, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$772.55** comprised of \$722.55 in unpaid rent for the month of October 2013,

plus \$50.00 for recovery of the 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. **I ORDER** the landlord to retain the tenant's full security deposit of \$347.50 in partial satisfaction of the landlord's claim and **I grant** the landlord a monetary order under section 67 for the balance due by the tenant to the landlord in the amount of **\$425.05**.

Conclusion

The landlord has established a total monetary claim of \$772.55. The landlord has been ordered to retain the tenant's full security deposit of \$347.50 in partial satisfaction of the landlord's claim and the landlord has been granted a monetary order under section 67 of the *Act* for the balance due by the tenant to the landlord in the amount of **\$425.05**. 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: February 21, 2014

Residential Tenancy Branch

