



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPB MNR MNDC FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent and for breach of an agreement with the landlord, for a monetary order for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was 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.

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 tenant was served with the Notice of Hearing on December 25, 2013 at 10:00 a.m. at the rental unit. The landlord stated that landlord's eighteen-year old daughter, "KD" was present to witness the landlord serve the tenant personally with the Notice of Hearing. The landlord stated that the package served on the tenant included the Notice of Hearing and the landlord's evidence. Based on the undisputed testimony of the landlord, and without any evidence to prove the contrary, I accept that the tenant was served in accordance with the Act on December 25, 2013.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord requested to withdraw their request for an order of possession as the tenant vacated the rental unit on December 29, 2013, after filing their application on December 27, 2013. Accordingly, the landlord's was permitted to withdraw their request for an order of possession as the landlord has already

obtained possession of the rental unit back from the tenant. Therefore, an order of possession will not be considered in this Decision.

Also at the outset of the hearing, the landlord requested to reduce their monetary claim from \$1,930.00 to \$750.00. I find that such a reduction in the landlord's claim does not prejudice the tenant and have permitted the reduction in the landlord's claim as a result.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy agreement began on November 15, 2013. Monthly rent in the amount of \$500.00 was due on the first day of each month. The tenant paid \$250.00 as a security deposit at the start of the tenancy, which the landlord testified was returned to the tenant on December 16, 2013, before the tenant vacated the rental unit on December 29, 2013.

The landlord testified that the tenant was served a 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated December 18, 2013 by posting the 10 Day Notice to the tenant's door on that date. The 10 Day Notice states that the tenant failed to pay \$250.00.00 due on December 15, 2013. The landlord stated that the tenant originally paid \$500.00 for December 2013 rent. The landlord stated that he later entered into a verbal agreement with the tenant to return half of the rent for December 2013 of \$250.00, and the tenant's \$250.00 security deposit if the tenant left early, but after the tenant received a total of \$500.00 from the landlord as agreed upon, the landlord stated that the tenant failed to comply with the terms of their verbal agreement and refused to move out of the rental unit. The landlord is seeking the \$250.00 owing for December 2013 rent due to the tenant failing to comply with the terms of their agreement having not moved out until December 29, 2013, plus \$500.00 for loss of January 2014 rent. The landlord submitted two receipts which the landlord stated supports that the tenant signed the receipts for having received his \$250.00 security deposit back, plus half of December 2013 rent of \$250.00.

Regarding loss of January 2014 rent, the landlord stated that he began to advertise the rental unit on January 10, 2014 and then again on January 24, 2014. The landlord did not provide evidence to support this portion of his testimony.

Analysis

Based on the documentary evidence and the landlord's undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Claim for unpaid rent for portion of December 2013 – Based on the undisputed testimony of the landlord, which I find is supported by the receipts submitted in evidence by the landlord, **I find** that the tenant reneged on the verbal agreement he had with the landlord by failing to vacate the rental unit early while keeping the \$250.00 portion of December 2013 rent returned from the landlord in good faith. Therefore, I find the landlord has proven this portion of his claim and is entitled to compensation in the amount of **\$250.00**, comprised of \$250.00 owing by the tenant to the landlord for that portion of December 2013 rent.

Claim for loss of rent for January 2014 – The tenant vacated the rental unit on December 29, 2013, and the tenancy was a month to month tenancy agreement, not a fixed term tenancy. Section 7 of the *Act* states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[emphasis added]

The landlord stated that he advertised the rental unit on January 10, 2014 and then again on January 24, 2014, and did not provide evidence to support that he advertised the rental unit. At the very least, I would have expected the landlord to have begun advertising the rental unit earlier and more often. As a result, I find the landlord failed to comply with section 7 of the *Act* by failing to do whatever was reasonable to minimize the damage or loss to the landlord. I find that advertising the rental unit earlier and more often would have been reasonable, which the landlord failed to do. Therefore, **I dismiss**

the landlord's claim for loss of January 2014 rent due to insufficient evidence, **without leave to reapply**.

As the landlord's claim had merit, **I grant** the landlord recovery of the **\$50.00** filing fee.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$300.00** comprised of \$250.00 owing by the tenant for the remainder of December 2013 rent, plus the \$50.00 filing fee. **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the total amount owing by the tenant to the landlord in the amount of **\$300.00**.

Conclusion

The landlord has established a total monetary claim of **\$300.00**. The landlord has been granted a monetary order under section 67 in the amount of **\$300.00**. 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: March 3, 2014

Residential Tenancy Branch

