



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRIUMPH DEVELOPMENTS LTD. (c/o HUNTER MCLEOD REALTY)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

An agent for the landlord (the "agent") attended the teleconference hearing. During the hearing the agent was given the opportunity to provide his 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 agent testified that the Notice of Hearing, evidence, and application for dispute resolution were served on the tenant by personal service to the tenant at the rental unit on January 29, 2014 and that the tenant accepted service. Based on the undisputed testimony of the agent, and without any evidence to prove to the contrary, I find the tenant was served with the Notice of Hearing, application and evidence on January 29, 2014.

Preliminary and Procedural Matter

At the outset of the hearing, the agent testified that the tenant vacated the rental unit on March 2, 2014, since filing the application. As a result, the agent requested to withdraw the landlord's request for an order of possession as the tenant had already returned possession of the rental unit by vacating the rental unit on March 2, 2014. As a result of the above, I will not consider the landlord's request for an order of possession as it has been withdrawn.

Issue to be Decided

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

Background and Evidence

The agent testified that a fixed term tenancy agreement between the parties began on June 1, 2012 and reverted to a month to month tenancy after May 31, 2013. Monthly rent in the amount \$950.00 was due on the first day of each month. The tenant paid a \$475.00 security deposit at the start of the tenancy, which the landlord continues to hold.

The landlord applied for dispute resolution on January 28, 2014, after a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated January 16, 2014 was served on the tenant by personal service at the rental unit on January 16, 2014. The 10 Day Notice has an effective vacancy date of January 26, 2014 and indicates that \$1,325.00 was owed as of January 1, 2014, which the agent stated was comprised of \$375.00 owing from December 2013 and \$950.00 owing for unpaid January 2014 rent due January 1, 2014. The 10 Day Notice was submitted in evidence.

The landlord is seeking a monetary claim in the amount of \$3,225.00 comprised of the following:

Item Description	Amount
1. Unpaid portion of December 2013 rent	\$375.00
2. Unpaid rent for January 2014	\$950.00
3. Unpaid rent for February 2014	\$950.00
4. Unpaid rent for March 2014	\$950.00
TOTAL MONETARY CLAIM	\$3,225.00

The agent provided undisputed testimony confirming the amounts described in the table above. The agent testified that the tenant did not dispute the 10 Day Notice or pay the amount listed on the 10 Day Notice within five days of receiving the 10 Day Notice. The agent stated that in addition to \$375.00 owing by the tenant for the unpaid portion of December 2013 rent, the tenant also owes \$950.00 for January 2014 rent, \$950.00 for February 2014 rent, and \$950.00 for March 2014 rent as the tenant did not vacate the rental unit until March 2, 2014.

Analysis

Based on the documentary evidence, undisputed testimony of the agent, and on the balance of probabilities, I find the following.

Monetary claim of landlord – The agent testified that the tenant failed to pay \$375.00 for December 2013 rent, and did not vacate the rental unit until March 2, 2014, having failed to pay January, February or March 2014 rent. 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 \$375.00 in rent for December 2013, \$950.00 for January 2014 rent, \$950.00 for February 2014 rent, and \$950.00 for March 2014 rent, and that by not vacating the rental unit until March 2, 2014 when rent was due on March 1, 2014, that the tenant's breach of the *Act* did not leave the landlord a reasonable amount of time to secure a new tenant for the month of March 2014.

Therefore, **I find** the landlord has met the burden of proof and **I grant** the landlord **\$3,225.00** comprised of \$375.00 for the unpaid portion of December 2013 rent, \$950.00 owing for January 2014 rent, \$950.00 owing for February 2014 rent, and \$950.00 owing for March 2014 rent, as claimed.

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 **\$3,275.00** comprised of \$3,225.00 in unpaid 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, which the landlord continues to hold, in the amount of \$475.00, which has accrued \$0.00 in interest to date.

I ORDER the landlord to retain the tenant's full security deposit of \$475.00 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 **\$2,800.00**. 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

The landlord has established a total monetary claim of \$3,275.00 as indicated above. The landlord has been ordered to retain the tenant's full security deposit of \$475.00 in partial satisfaction of the claim. The landlord has been granted a monetary order under section 67 for the balance due by the tenant to the landlord in the amount of \$2,800.00. 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 14, 2014

Residential Tenancy Branch

