



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:51 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she sent the tenant a copy of her dispute resolution hearing package by registered mail on February 26, 2014. She entered into written evidence copies of the Canada Post Customer Receipt containing the Tracking Number for this registered mailing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's dispute resolution hearing package and the landlord's initial written evidence included in that package on March 3, 2014, the fifth day after this registered mailing.

At the commencement of the hearing, the landlord testified that the tenant vacated the rental unit by mid-March 2014. As the landlord already has vacant possession of the rental unit, the landlord withdrew her application for an Order of Possession. The landlord's application for an Order of Possession is hereby withdrawn.

When this hearing started, the landlord said that she had submitted a second application for dispute resolution seeking an additional monetary award for damage that became apparent after this tenancy ended. She testified that this second application is currently scheduled to be heard in July 2014. She asked for permission to have her

second application joined to the current application and heard as part of the matters before me at this hearing. In this regard, the landlord testified that she sent the tenant a copy of her 24 page written evidence package, including photographs and a Monetary Order Worksheet outlining the details of her second claim, by registered mail on April 12, 2014.

I advised the landlord that I could not agree to her request to have her second application joined to the current application as I was not satisfied that the tenant has been properly notified of her intent to do so. Pursuant to section 90 of the *Act*, an evidence package sent to a party by registered mail on April 12, 2014 would not be deemed served until April 17, 2014, the same day as the current hearing. I advised the landlord that her claim for additional damage would need to be considered at the scheduled hearing of this matter at 10:30 a.m. on July 29, 2014.

During the course of this hearing, the landlord advised me that she would prefer to have all of her damage claim considered during a single hearing. As it was not possible for me to consider the items identified in her second application for dispute resolution during the current hearing, the landlord withdrew her current application for damage. This application was for an \$80.00 monetary award for the replacement of a damaged wicker chair and \$40.00 for dumping that chair and a mattress at the end of this tenancy.

The landlord's application for the damage noted on this application for dispute resolution is withdrawn with leave to reapply. The landlord is at liberty to amend her second application for dispute resolution to include these items in the matters to be considered at the hearing scheduled for July 29, 2014. To do so, the landlord will need to submit an amended application to the Residential Tenancy Branch (the RTB) and serve the tenant with a copy of that amended application shortly thereafter.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy for a partially furnished rental cabin began on September 1, 2013. Monthly rent was set at \$500.00, payable in advance on the first of each month. The landlord continues to hold a \$200.00 security deposit for this tenancy paid on September 1, 2013.

On February 1, 2014, the landlord sent the tenant a letter advising her that she was seeking an end to this tenancy by February 28, 2014, for the landlord's use of the property. Although the landlord correctly cited section 49(6)(b) of the *Act* as the legal authority for issuing a notice to end this tenancy so that the landlord could undertake measures to renovate or repair the rental unit in a manner that required the tenant to vacate the rental unit, she did not issue this notice on the required RTB form, a 2 Month Notice to End Tenancy for Landlord's Use (a 2 Month Notice). She also gave the tenant insufficient notice to end this tenancy, as two full months would need to be given to a tenant under these circumstances.

While the landlord's failure to issue the 2 Month Notice on the correct form would have invalidated the landlord's February 1, 2014 letter had the tenant disputed the matter, the tenant vacated the rental unit by mid-March 2014, on the basis of her understanding that she had been issued a valid notice to end this tenancy for landlord's use of the property. The landlord testified that the tenant paid her full monthly rent for February 2014, but the landlord agreed to forego the tenant's payment of rent for March 2014, the final month of her tenancy. The tenant was entitled to stay in the rental unit during the last month of her tenancy at no charge due to the landlord's issuance of a notice to end tenancy for landlord's use of the rental unit.

The remaining portion of the landlord's original application for a monetary award of \$320.00 is for an amount of \$150.00, which the tenant withheld from her January 2014 rent. The landlord maintained that the tenant withheld this amount without authorization and did not supply requested receipts to enable her to retain any portion of her January 2014 rent.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Based on the landlord's undisputed sworn testimony supported by written evidence, I find that the tenant had no legal authority to withhold any portion of her January 2014 rent. The tenant has not provided any written evidence to show that she has obtained either the landlord's written authorization to withhold \$150.00 from her January 2014 rent or any order from an Arbitrator appointed under the *Act* to do so. Under these circumstances, I find that the landlord is entitled to a monetary award of \$150.00 for losses she incurred as a result of the tenant's failure to pay all of the rent she owed for January 2014.

As the landlord has been partially successful in her application, I allow the landlord to recover her \$50.00 filing fee from the tenant.

I allow the landlord to retain the tenant's \$200.00 security deposit to recover the monetary award issued in this decision. No interest is payable over this period for the tenant's security deposit.

Conclusion

I order the landlord to retain the tenant's \$200.00 security deposit in order to allow the landlord to implement my decision to issue the landlord a monetary award of \$150.00 for loss of rent from January 2014, and to recover the landlord's \$50.00 filing fee for this application. 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: April 17, 2014

Residential Tenancy Branch

