



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession based on cause and unpaid rent and utilities. The Landlord also applied for a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep the Tenant’s security deposit; and to recover the filing fee for the cost of making the Application.

The Landlord appeared for the hearing to provide affirmed testimony and also submitted written and photographic evidence prior to the hearing. The Landlord testified that he had served the Tenant with the Notice of Hearing documents by registered mail on February 14, 2014. The Landlord provided the Canada Post tracking number as evidence for this method of service. Section 90(a) of the Act states that a document served by mail is deemed to have been received 5 days after it is mailed. Therefore, I find that the Landlord served the Tenant with the Notice of hearing documents pursuant to Section 89(1) (a) of the Act and the Tenant is deemed to have received these on February 19, 2014.

The Tenant failed to appear for the duration of the hearing and did not provide evidence prior to the hearing despite being served in accordance with the Act. As a result, I continued the proceedings in the absence of the Tenant and considered the undisputed evidence provided by the Landlord for this hearing.

Preliminary Matters

The Landlord made an Application which comprised of a monetary claim relating to unpaid rent and utilities on February 13, 2014. The details section of the Application contains details of the unpaid rent and utilities in the amount of \$2,255.00 and a claim for the security deposit of \$500.00.

The Landlord testified that the Tenant abandoned the rental suite sometime around February 22, 2014. On entering the rental unit after the Tenant had left, the Landlord discovered that the Tenant had caused a considerable amount of damage to the rental suite. The Landlord prepared the evidence in relation to this damage and discovered that the Tenant had moved to a new residence for which he was able to identify the address. As a result, the Landlord registered mailed the evidence of his additional claim for damage to the Tenant and testified that the Tenant had received this as evidenced by the Canada Post website. However, the Landlord did not amend the **Application** to include damages to the rental suite and increase the monetary amount being claimed in relation to the damages.

Rule 2.5 of the Rules of Procedure provides for the procedure an applicant must follow when they intend to adjust or amend their Application. As the Landlord did not serve the Tenant with an amended Application in accordance with Rule 2.5 to put the Tenant on notice of the increased monetary claim, I find that providing the Tenant with the evidence in relation to the damages to the rental suite is not sufficient notice and would not be in the accordance with the principles of natural and fair justice.

As a result, I have only considered the Landlord's Application for unpaid rent or utilities for February and March, 2014 and to keep the Tenant's security deposit, as the only matters to be dealt with in this hearing. Based on the fact that the Tenant moved out, I dismiss the Landlord's Application for an Order of Possession. The Landlord is at liberty to make a new Application claiming for damages, cleaning, repairs and unpaid utilities contained in the Landlord's evidence, which was not subject to this Application.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent for February, 2014 and March, 2014?
- Is the Landlord entitled to utilities for March, 2014?

Background and Evidence

The Landlord testified that this tenancy started on August 15, 2013 for a fixed term of one year due to end on August 31, 2014 at which point it would continue on a month to month basis. The Tenant paid the Landlord a \$550.00 security deposit at the start of the tenancy and a written tenancy agreement was completed and provided as evidence.

The agreement contained some additional terms, one of which was "Tenant is to pay 2/3 of the utilities each month. The utilities are to be paid on the 1st of each month". The Landlord testified that the Landlord paid utilities on an equal payment plan and the

utilities portion payable by the Tenant was set at \$155.00 per month. Rent was established at \$1,100.00 payable by the Tenant on the first day of each month.

The Landlord testified that the Tenant was habitually late paying rent from the start of the Tenancy and after being served with a notice to end tenancy for unpaid rent and utilities and another one for repeatedly late payments in January, 2014, the Tenant abandoned the rental suite in the latter half of February, 2014.

The Landlord testified that the Tenant had over paid rent in January, 2014 leaving an outstanding balance of only \$1,000.00 payable on February 1, 2014. However, this was not paid by the Tenant, which is now claimed by the Landlord.

The Landlord testified that as he had given the Tenant a notice to end tenancy for the end of February, 2014 he tried to re-rent the suite by arranging for new renters to view the suite on February 13, 2014. However, after giving the Tenant legal notice of entry into the suite, the Tenant prevented entry to the Landlord by using the stop chain on the door and told him that if he wanted entry, the Landlord would need an Order of Possession.

The Landlord testified that due to the damages and the restriction by the Tenant to show the suite, he was unable to re-rent the suite until April, 2014. As a result, the Landlord now claims for loss of rent and utilities for March, 2014 in the amount of \$1,255.00.

Analysis

I have accepted the undisputed testimony and evidence of the Landlord in this case and as a result, I make the following findings.

Section 26(1) of the Act states that Tenant must pay rent when it is due under a tenancy agreement. As a result, I find that the Tenant failed to pay rent to the Landlord in the amount of **\$1,000.00** for February, 2014.

Section 7 of the Act allows a party to make a claim for loss under the Act, regulation or tenancy agreement. This section also requires a party making such a claim to do whatever is reasonable to minimize the loss. As a result, I accept the Landlord's testimony that the Landlord attempted to mitigate loss by re-renting the suite for March, 2014 but was unable to do so as the Tenant impeded these efforts. As a result, I find that the Landlord is entitled to lost rent for March, 2014 in the amount of **\$1,100.00**

I dismiss the Landlord's claim for utilities relating to March, 2014 as the Tenant had vacated the rental suite in February, 2014 and therefore the Tenant cannot be held liable for utilities that were not used during this month.

As the Landlord has been successful in his claim, I also award the Landlord **\$50.00** for the cost of filing this Application pursuant to Section 72(1) of the Act. Therefore the total amount payable by the Tenant to the Landlord is \$2,150.00.

The Landlord currently holds \$550.00 of the Tenant's security deposit. As a result, I allow the Landlord to retain this amount in partial satisfaction of the Landlord's award pursuant to Section 38(4) (b) of the Act. Therefore, the Landlord is entitled to a Monetary Order in the amount of \$1,600.00.

Conclusion

For the reasons set out above, I find that the Landlord is entitled to monetary compensation pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$1,600.00**. This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 02, 2014

Residential Tenancy Branch

