



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton Group Medallion Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MND, MNSD, 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 unpaid rent and for damage to the unit, site or property pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Tenant MTFM (the tenant) confirmed that she received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which the landlord testified that she posted on the door of the rental unit on January 21, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the 10 Day Notice on January 24, 2014, the third day after its posting.

The landlord testified that she sent both Respondents a copy of the dispute resolution hearing package by registered mail on April 30, 2014. The tenant confirmed that she received this package on or about May 18, 2014, when it was left at the rental unit. She said that by the time this package was received at the rental unit, the landlord had changed the locks and taken possession of the rental unit. As the tenant confirmed receipt of the landlord's hearing package, I am satisfied that the landlord served the Respondents in accordance with section 89 of the *Act*.

At this hearing, the parties agreed that this tenancy ended by April 3 or 4, 2014. The landlord testified that she and the owner of the property found that the tenant was no longer living at the property and had abandoned the rental unit by that time. The tenant testified that the tenants were in the process of moving out of the rental unit on April 3 or

4, 2014, when they discovered that the landlord had changed the locks and denied them access to the rental unit. As the landlord has possession of the rental unit, the landlord withdrew the application for an Order of Possession.

At the commencement of this hearing, I noted that the Residential Tenancy Agreement (the Agreement) entered into written evidence by the landlord was only signed by the tenant. As the other tenant shown as a Respondent did not sign the Agreement, I advised the parties that I could only consider the landlord's claim for a monetary award against the tenant who attended this hearing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy began on April 1, 2013, and was scheduled to end by March 31, 2014. Monthly rent was set at \$1,350.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$680.00 security deposit paid on March 10, 2013.

The landlord's application for a monetary award of \$7,450.00 included unpaid rent owing for the four months from January 2014 until April 2014. The landlord's application also included a request for reimbursement of \$900.00 in damage arising out of this tenancy and a further \$1,150.00 for garbage removal, carpet cleaning and general house cleaning. The only written evidence provided by either party was a copy of the Agreement and the 10 Day Notice, both supplied by the landlord. The landlord testified that no joint move-in condition inspection report was created for this tenancy. Although the landlord inspected the rental unit at the end of this tenancy, the landlord testified that no move-out condition inspection report was prepared by the landlord.

The tenant testified that some of the tenants' possessions remained in the rental unit when the landlord seized possession of the rental unit. The tenant agreed that she did not pay any rent this year for this tenancy. However, as she maintained that the landlord locked her out of the rental unit, she did not believe she should be held responsible for paying rent for April 2014.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties in attendance at this hearing agreed to the following final and binding resolution of the landlord's application and all issues arising out of this tenancy:

1. The tenant agreed to pay the landlord a sum of \$3,330.00.
2. The landlord agreed to withdraw the application for an Order of Possession and for a monetary award for damage arising out of this tenancy.
3. The tenant agreed to allow the landlord to keep her security deposit.
4. Both parties agreed that the above-noted terms of settlement constituted a final and binding resolution of all monetary issues arising out of this tenancy and the landlord's application, and furthermore agreed that the parties would not commence any new application or initiative of any kind arising out of this tenancy.

After both parties reiterated their agreement to the above-noted terms of their settlement, I asked the tenant to provide me with a mailing address where I could send a copy of my decision. After the tenant started providing her new address, a male voice bellowed out to her advising her that she should not do so. The tenant asked to be excused for a moment, and subsequently disconnected from the hearing. Although I waited for her to reconnect, she did not re-establish a connection with this teleconference. While this turn of events was of some concern as the tenant had given sworn testimony that no one else was planning to participate in this hearing from her location, the tenant's disconnection from the teleconference occurred after she had confirmed her agreement to settle all matters arising out of this tenancy on the basis of the above-noted terms. For these reasons, I am sending the decision to the only address we have for the tenant.

Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$3,330.00. I deliver this Order to the landlord in support of the above agreement for use in the event that the tenant does not abide by the terms of the above settlement. The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the tenant fail to comply with these Orders, these Orders

may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

In accordance with the settlement reached between the parties, I also order the landlord to retain the security deposit for this tenancy.

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: June 18, 2014

Residential Tenancy Branch

