



Dispute Resolution Services

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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, 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 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.

The tenant did not attend this hearing, although I waited until 11:13 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 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 handed an adult resident of the rental unit a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on April 8, 2014. I find that the 10 Day Notice was deemed served to the tenant as declared by the landlord in accordance with section 88 of the *Act*. The landlord testified that she sent a copy of her dispute resolution hearing package to the tenant by registered mail on April 29, 2014. The landlord provided the Canada Post Tracking Number to confirm this mailing. She testified that this package was received by the tenant on May 2, 2014. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with this hearing package on May 4, 2014, the fifth day after its registered mailing.

At the hearing, the landlord withdrew her application for an Order of Possession because she said that the rental unit was vacated by May 14, 2014. The landlord's application for an Order of Possession is hereby withdrawn.

At the hearing, the landlord asked that an additional \$2,100.00 be added to her requested monetary award as unpaid rent became owing from May 2014, after the

landlord applied for dispute resolution. I have amended the landlord's requested monetary award from \$2,100.00 to \$4,200.00.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? 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 July 1, 2013 and was scheduled to end on June 30, 2014. According to the terms of the Residential Tenancy Agreement entered into written evidence by the landlord, monthly rent was set at \$2,100.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$1,050.00 security deposit paid on June 21, 2013.

The landlord gave sworn testimony and written evidence that the tenant has not paid any portion of the April or May 2014 rent for this tenancy.

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. I find that the tenant was in breach of her fixed term tenancy by ending her tenancy before the June 30, 2014 date specified in that agreement and failed to pay any rent for April or May 2014. As such, the landlord is entitled to compensation for unpaid rent owing from the tenant's failure to comply with the terms of her tenancy agreement and the *Act*. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord testified that the rental unit has not been re-rented as the rental unit was damaged during this tenancy and considerable cleanup has been required following the end of this tenancy. Under these circumstances, the landlord maintained that the landlord was unable to take measures to mitigate the tenant's exposure to the landlord's loss of rent for May 2014.

Based on the evidence presented, I accept that the landlord has discharged the duty under section 7(2) of the *Act* to minimize the tenant's exposure to the landlord's loss of rent. I issue a monetary award in the landlord's favour in the amount of \$4,200.00 representing unpaid rent owing from April and May 2014.

In order to implement this monetary award, I allow the landlord to retain the tenant's security deposit plus applicable interest. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the filing fee.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the filing fee and to retain the tenant's security deposit:

Item	Amount
Unpaid April 2014 Rent	\$2,100.00
Unpaid May 2014 Rent	2,100.00
Less Security Deposit	-1,050.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$3,200.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. 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.

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

