



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, OPR, MNR, MNDC, MNSD, FF
CNC, CNR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords and the Tenant.

The Landlords applied for an Order of Possession for cause and unpaid rent, and for a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”); to keep the Tenant’s security deposit; and to recover the filing fee for the cost of the Application.

The Tenant applied to cancel the notice to end tenancy for cause and unpaid rent and to recover the filing for the cost of the Application.

One of the Landlords and an agent for the other Landlord named on the Application appeared for the hearing and provided affirmed testimony as well as written evidence in advance of the hearing.

Preliminary Issues

The Landlord testified that the Tenant was served with a copy of the Application, which contained a monetary claim for unpaid rent only, by registered mail on June 16, 2014. The Landlord provided a copy of the Canada Post tracking number in written evidence for this method of service. The Canada Post website indicates that the documents were received and signed for by the Tenant on June 18, 2014. Based on this evidence, I find that the Tenant was served with the documents pursuant to Section 89(1) (c) of the Act.

In addition, when the Tenant made his Application on June 6, 2014, the Tenant was provided with a Notice of Hearing document which detailed the same date and time for this hearing for both Applications to be heard together.

However, the Tenant failed to appear for the one hour duration of this hearing, despite being provided notice of the hearing in accordance with the Act. At the Tenant failed to appear for the hearing to present the merits of his Application and the Landlord was present and ready to proceed, I dismiss the Tenant's Application without leave to re-apply.

At the start of the hearing, the Landlord confirmed that the Tenant had abandoned the rental unit, without any notice, on June 28, 2014. As a result, the Landlords did not require an Order of Possession and withdrew this request from their Application.

I also determined that the Landlord had sought to make a claim for damages to the rental suite which resulted in an increase in the monetary amount being claimed by the Landlords.

However, the Landlord detailed the monetary claim for damages to the rental suite in written evidence with supporting documentation which was personally served to the Tenant, but failed to amend the Application to include a request for a claim for damages to the rental suite and increase the monetary amount being claimed on the Application as required by Rule 2.5 of the Rules of procedure.

An Applicant cannot make amendments to their Application through written submissions as this is not sufficient to put the Respondent on notice for an amendment to the Application. Therefore, I was only able to hear the Landlords' Application for unpaid rent that was initially made. However, the Landlords are at liberty to claim for damages to the rental suite through a new Application.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for unpaid rent for the months of June and July, 2014?
- Are the Landlords entitled to keep the Tenant's security deposit in partial satisfaction of this claim?

Background and Evidence

The Landlord testified that this tenancy started on April 1, 2011 for a fixed term of one year after which the tenancy continued on a month to month basis. A written tenancy agreement was completed and the Landlords collected a security deposit from the Tenant in the amount of \$1,000.00 on March 1, 2011 which the Landlords still retain. Rent in the amount of \$2,000.00 was payable by the Tenant at the start of the tenancy

and this amount was increased to \$2,076.00 during the tenancy and was the amount payable when the Tenant abandoned the tenancy.

The Landlord testified that the Tenant failed to pay full rent on June 1, 2014. As a result, the Landlords attached a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on the Tenant's door on June 2, 2014. The Notice, which was provided in written evidence, had an effective date of vacancy of June 11, 2014 due to unpaid rent in the amount of \$2,076.00.

The Landlord testified that the Tenant abandoned the suite on June 28, 2014 without any written notice for ending the tenancy or providing a forwarding address. As a result, the Landlords now seek to claim for unpaid and loss of rent for June and July, 2014 in the amount of \$4,152.00.

Analysis

Firstly, I find that the contents of the Notice complied with Section 52 of the Act. Secondly, I find that the Notice was served to the Tenant in accordance with Section 88(g) of the Act on June 2, 2014. Section 90(c) of the Act explains that a document served by attaching it to the door is deemed to have been received three days later. As a result, I find that the Tenant was served with the Notice on June 5, 2014.

Section 46(4) of the Act explains that on receiving a Notice under this Section, a Tenant may dispute the Notice by making an Application or pay the outstanding rent owed on the Notice within five days after which point it will have no effect.

While the Tenant did make an Application to dispute the Notice, the Tenant failed to appear for the hearing to explain the reasons why the amount on the Notice was unpaid. In the absence of any testimony or written evidence by the Tenant, I accept the Landlord's oral testimony and the written evidence that the Tenant failed to pay rent for June, 2014.

Policy Guideline 3 to the Act explains the following:

"In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month".

[Reproduced as written.]

I also accept the undisputed evidence of the Landlord that the Tenant failed to give sufficient notice to end the tenancy that would have allowed enough time for the Landlord to rent out the suite for July, 2014. Based on the Landlord's evidence and the provisions of the policy guideline above, I find that the Tenant is also responsible for July, 2014 rent.

As the Landlords have been successful in this matter, the Landlords are also entitled to recover from the Tenant the \$50.00 filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$4,202.00.

As the Landlords already hold \$1,000.00 in the Tenant's security deposit, I order the Landlords to retain this amount in partial satisfaction of the Landlords' claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlords are awarded \$3,202.00.

Conclusion

For the reasons set out above, I grant the Landlords a Monetary Order pursuant to Section 67 of the Act in the amount of **\$3,202.00**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The Tenant's Application is dismissed without leave to re-apply.

The Landlords are at liberty to make a claim for damages to the rental suite through a new 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: July 29, 2014

Residential Tenancy Branch