



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, OPB, MNR, MNSD, MNDC, CNR, OPT, AAT, LAT, FF

Introduction

This hearing dealt with applications by the landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and a monetary order for unpaid rent, loss of income, cost of bailiff services, dumping costs and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim.

The tenant applied to cancel the notice to end tenancy and for compensation for the loss of her personal belongings and the return of rent. The tenant also applied for an order of possession, to be allowed access to the rental unit and be allowed to change the locks.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The landlord agreed that he had received the tenant's evidence package. The tenant stated that she had mailed her evidence package to the Residential Tenancy Branch by regular mail, shortly after having made application on June 16, 2014. As of the date of this hearing, the tenant's evidence was not received in the office. However since the landlord had the evidence of the tenant, it will be used in the making of this decision.

The tenant stated that she had not received the evidence package of the landlord. The landlord stated that he sent the package by registered mail to the tenant to the address provided by the tenant on her application. I accept that the landlord served his evidence package to the address provided by the tenant.

This hearing took place on August 12, 2014. Prior to this hearing, on May 23, 2014, the landlord was granted an order of possession and a monetary order in the amount of \$2,200.00 for the balance of rent owed for the months of April and May, 2014.

On June 02, 2014, the landlord obtained a writ of possession from the Supreme Court. The tenant applied for a review of the decision dated May 23, 2014 and on June 05, 2014, was granted a review hearing.

The landlord was unaware that the tenant had applied for a review of the decision and had been granted a review hearing. On June 11, 2014 the landlord hired a bailiff to enforce the order of possession. After the bailiff had removed the possessions of the tenant from the rental unit, the tenant filed an application in the Supreme Court and was successful in her application to have the writ of possession stayed.

On June 12, 2014, the landlord made application to the Supreme Court to overturn the stay of proceedings order because the writ of possession had already been executed prior to the tenant's application to have the order stayed. The landlord was successful in his application and filed into evidence a copy of the Supreme Court decision to set aside the stay of proceedings that was granted to the tenant on June 11, 2014.

Since the tenancy has ended the only relevant portions of the applications of both parties are their monetary claims. Accordingly this hearing only dealt with the monetary claims of both parties.

Pursuant to the tenant's successful application for a review hearing of the decision dated May 23, 2014, the parties were scheduled to be heard on July 29, 2014. The landlord did not attend. The Arbitrator determined that the landlord had not been served with a notice of hearing and therefore adjourned the hearing to be heard on October 08.

The tenant stated that she had no interest in moving back in and therefore the review hearing scheduled for October 08, 2014 will deal with the issue of rent for months of April and May 2014. During the hearing on August 12, 2014, I offered to hear all matters related to the dispute between the parties, which would relieve the parties of the need to go to another hearing on October 08, 2014. The tenant was insistent on wanting the review hearing to be conducted as scheduled.

Accordingly, this hearing dealt with the tenant's application for compensation for the loss of her personal belongings and the return of rent and the landlord's application for rent for June, loss of income for July, bailiff's costs, dumping fees and the filing fee. Rent for the months of April and May 2014 will be dealt with during the hearing on October 08, 2014.

Issues to be decided

Are the parties entitled to their claims for monetary orders?

Background and Evidence

The tenancy started on December 01, 2013. The parties had signed a tenancy agreement on November 28, 2013 in which the tenant is the only named occupant of the rental unit. The monthly rent as stated in the tenancy agreement is \$1,350.00 due on the first of each month. The tenant paid a security deposit of \$675.00.

The tenant stated that her boyfriend occupied the rental unit with her and together they paid \$1,350.00 for rent per month.

The tenant stated that on January 01, 2014, due to problems with her boyfriend, she was unable to cover rent and therefore asked her boyfriend to leave. The tenant stated that a second tenancy agreement for the same rental unit was entered into on January 01, 2014. The rent according to the second agreement was \$900.00.

The landlord stated that the tenant approached him in January 2014 and asked him to sign a tenancy agreement for her portion of the rent in the amount of \$900.00 in order to allow her to apply for a rent subsidy. The landlord stated that he signed this second agreement only to assist the tenant in obtaining the rent subsidy. The landlord maintained that the monthly rent was always \$1,350.00.

Despite the new agreement, the tenant continued to pay \$1,350.00 for rent per month for the months of January, February, March and April. In April the tenant's rent cheque was returned for lack of funds. The landlord filed a copy of the cheque. It was dated April 01, 2014 and was for the amount of \$1,350.00. After the cheque was returned, the tenant paid \$500.00 in cash to the landlord and did not pay the balance of rent for April. The landlord also filed a copy of the rent cheque provided by the tenant for the month of May in the amount of \$1,350.00.

On May 06, 2014, the landlord made an application by direct request and was granted an order of possession and a monetary order for unpaid rent for April and May 2014. These orders will be the subject of the review hearing scheduled for October 08, 2014.

The tenant agreed that she did not pay rent for June 2014. She stated that she had overpaid rent in the months starting January 2014 and therefore she decided that she did not owe rent and on the contrary the landlord owed her the overpayment of rent.

The landlord stated that on June 11, 2014, during the eviction carried out by the bailiff, the bailiff placed the tenant's belongings on her driveway at the tenant's request. The bailiff covered the belongings with plastic sheets for protection.

The landlord filed photographs of the manner in which the tenant's belongings were placed on the driveway. The tenant agreed that the bailiff had placed her belongings on the driveway, at her request.

The tenant stated that she was unable to move her belongings because she did not have a place to stay. She stated that she returned to the rental unit after the eviction and lived on the deck until June 16, 2014 when she was removed by the police. The tenant stated that passersby and the other occupants of the property picked through her belongings and most of her items were stolen.

The landlord filed photographs that were taken every day that show the condition of the tenant's belongings as time went by. The photographs show the increase in the scattering of items and the messiness of the pile of items, with each passing day.

The landlord stated that eventually people started dumping garbage on the pile and therefore on June 23, 2014, he took the balance of the pile to the local dump. The landlord also filed photographs of the items being loaded onto a truck for disposal and copies of the receipts for dumping costs.

The landlord stated that he started advertising the availability of the unit on June 23, 2014 but was unsuccessful in finding a tenant for July 2014. A new tenant was found for August 2014. The landlord filed copies of invoices of the costs incurred for the services of the bailiff in the amount of \$2,000.00.

The tenant stated that her belongings consisted of new furniture and other valuable personal items. The tenant is claiming \$8,400.00 as compensation for the loss of her belongings and \$1,600.00 for the return of overpaid rent.

Analysis

The parties did not agree on the amount of rent that was due. The tenant stated that it was \$900.00 while the landlord stated that rent was \$1,350.00. I must now determine on a balance of probabilities, the amount of the rent that was payable each month.

On November 28, 2013, the parties entered into an agreement and rent was set at \$1,350.00. The tenant stated that in January 2014, they entered into another agreement and rent was lowered to \$900.00 for the same rental unit. The landlord argued that the tenant requested that he sign a tenancy agreement for this amount of rent to enable her to obtain a rental subsidy. The \$900.00 was supposed to represent her portion of the rent and did not include her boyfriend's contribution.

Despite this new tenancy agreement the tenant continued to pay \$1,350.00 for the months of January, February, March and April 2014.

Based on the above, I find that:

1. The rent was initially set at \$1,350.00.
2. In January 2014, the landlord signed an agreement for rent in the amount of \$900.00
3. The tenant continued to pay \$1,350.00 for rent, after the second agreement was entered into
4. The landlord filed copies of cheques written by the tenant for rent for the months of April and May 2014 in the amount of \$1,350.00

Based on my findings, I find that if the rent was lowered to \$900.00 effective January 01, 2014, the tenant had no reason to continue to issue rent cheques in the amount of \$1,350.00 for the balance of the tenancy. Accordingly I find that on a balance of probabilities, it is more likely than not that the rent did not change from \$1,350.00.

The tenant agreed that she had not paid rent for June 2014. Therefore I find that the landlord is entitled to rent in the amount of \$1,350.00.

I further find that the landlord disposed of the tenant's belongings on June 23 and also started advertising the availability of the unit from that day. The landlord did not have sufficient time to find a tenant for July and despite his efforts the unit remained vacant for July and therefore the landlord suffered a loss of income in the amount of \$1,350.00. I find that the landlord is entitled to recover this loss of income and therefore I award the landlord \$1,350.00.

The landlord is also claiming \$240.00 for Court fees, 2000.00 for bailiff's fees and \$209.00 for dump fees. The landlord has filed receipts as proof of payment and since these are costs arising from the enforcement of the order of possession, I find that the landlord is entitled to a total of \$2,449.00. The landlord has proven his case and is therefore entitled to the recovery of the filing fee of \$100.00.

The tenant has made a claim of \$1,600.00 for the return of rent that she believes that she overpaid. Based on my determination that rent was \$1,350.00 per month, I find that the tenant has not overpaid rent and therefore her claim for the return of rent is dismissed.

The bailiff acted pursuant to a writ of possession issued by the Supreme Court authorizing the bailiff to deal with the tenant's belongings which were in the rental unit. The bailiff placed the tenant's belongings on the driveway according to the tenant's request.

The tenant by her own admission agreed that she did not remove her belongings in a timely manner because she did not have a place to take them to. Therefore I find that the landlord is not responsible for any losses that the tenant may have suffered from the disappearance or destruction of her personal belongings.

The tenant's application for a monetary order in the amount of \$10, 000.00 is dismissed.

Overall the landlord has established a claim of \$5,249.00 for the following:

1.	Unpaid rent for June	\$1,350.00
2.	Loss of income for July	\$1,350.00
3.	Bailiff's fees	\$2,000.00
4.	Court fees	\$240.00
5.	Dump fees	\$209.00
6.	Filing fee	\$100.00
	Total	\$5,249.00

I order that the landlord retain the security deposit of \$675.00 and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for \$4,574.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for **\$4,574.00**.

The tenant's application is dismissed.

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: August 12, 2014

Residential Tenancy Branch

