



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF
 CNR, MNDC, RP, RR, 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 and the Tenant.

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent, and for money owed or compensation for loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement and to recover the filing fee.

The Tenant applied to cancel the notice to end tenancy, for money owed or compensation for damage or loss under the Act, to make repairs to the rental unit, to allow the Tenant to reduce rent for repairs agreed upon but not provided, and to recover the filing fee.

The Landlord appeared for the hearing and provided affirmed testimony as well as written evidence in advance of the hearing. There was no appearance for the Tenant during the duration of the hearing despite the Tenant being provided with the same date and time for the hearing as the Landlord’s Application.

Furthermore, the Landlord’s agent provided the Canada Post tracking number in written evidence as proof of service for the notice of hearing documents and a copy of his Application. As a result, I find that the Landlord served the Tenant in accordance with Section 89(1) (c) of the Act.

Preliminary Matters

The Landlord’s agent explained that the Tenant had vacated the rental suite on September 8, 2014 and therefore the Landlord no longer required an Order of Possession. As a result, I dismissed this portion of the Landlord’s Application.

The Landlord's agent explained that his monetary claim on his Application consisted of anticipated nonpayment of rent for the months of August and September, 2014.

The Landlord indicated on the details section of his Application that he was also seeking to recover the balance outstanding for the security and pet damage deposits. However, as the tenancy has now ended, a payment for deposits cannot be ordered. However, I amended the Landlord's Application for a request to keep the Tenant's security deposit in the amount he still retains, pursuant to 64(3) (c) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent for July, August and September, 2014?
- Is the Landlord entitled to keep the Tenant's security deposit of \$400.00 in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started on July 1, 2014 for a fixed term of three months which was to continue on month to month basis. A tenancy agreement was completed and rent was payable by the Tenant in the amount of \$950.00 on the first day of each month. The Tenant was requested to pay \$450.00 each for a pet damage and security deposit at the start of the tenancy; however, the Landlord testified that the Tenant only paid \$400.00 which he still retains.

The Landlord testified that when the tenancy started the Tenant provided three postdated cheques. However, the first one provided for the first month of the tenancy was returned as insufficient funds ("NSF") for July, 2014 rent; the Landlord provided written evidence to support this submission. The Landlord testified that the Tenant was informed of this and on July 15, 2014 the Tenant paid \$900.00 of the outstanding \$950.00 rent, leaving an outstanding balance of \$50.00 which the Landlord now seeks.

As a result, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on July 17, 2014 in the amount of \$600.00 with an effective vacancy date of July 28, 2014. The Notice was provided in written evidence. The Landlord explained that this amount comprised of \$50.00 of unpaid rent for July, 2014 and \$550.00 outstanding for the deposits payable at the start of the tenancy.

The Landlord's agent further submitted that the Tenant also failed to pay rent for August, 2014 for which the Tenant was served with another Notice on August 8, 2014 which was also submitted in written evidence. The Landlord also claims for September 2014 rent because the Tenant failed to pay rent for this month and abandoned the

rental suite on September 8, 2014; the Landlord was unable to re-rent the suite for September, 2014. As a result, the Landlord now seeks a total of **\$1,950.00** in unpaid rent $((950 \times 2) + 50)$.

Analysis

Section 26(1) of the Act states that a Tenant must pay rent when it is due under a tenancy agreement **whether or not** a Landlord complies with the Act. Based on the undisputed testimony and written evidence presented by the Landlord, I accept that the Tenant failed to pay \$50.00 for the month of July, 2014 and failed to pay full rent for the months of August and September, 2014. As a result, I award the Landlord loss of rent for a total amount of **\$1,950.00** claimed.

As the Landlord has been successful in this matter, the Landlord is entitled to 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 \$2,000.00.

As the Landlord already holds the Tenant's **\$400.00** security deposit, I order the Landlord to retain this amount in partial satisfaction of the award, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded **\$1,600.00** in unpaid rent.

Conclusion

For the reasons set out above, I hereby grant a Monetary Order in the amount of **\$1,600.00** in favor of the Landlord pursuant to Section 67 of the Act. 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 if the Tenant fails to make payment.

As the Tenant failed to appear for the hearing and prove the Application, I hereby dismiss the Tenant's Application in its entirety **without** leave to re-apply.

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: September 22, 2014

Residential Tenancy Branch

