



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RLPSC-PM
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – CNR, FF

For the landlord – OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a Notice to End Tenancy for unpaid rent and to recover the filing fee from the landlord for the cost of this application. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

The hearing went ahead as scheduled the landlord dialed into the conference call. The line remained open for 10 minutes; however, no one for the tenant dialed into the call. Based on the above I find that the tenant has failed to present the merits of their application and the application is dismissed without leave to reapply. The hearing continued on the landlord's application only.

The landlord originally filed their application on July 11, 2014. Service of these hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on July 15, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*. However, the landlord amended their application on September 02, 2014 to include a request to keep the security deposit. This amended application was served upon the tenant after the tenant had vacated the rental unit. I cannot therefore deem that the tenant has been served in accordance with s. 89 of the *Act* with the amended application. Consequently, I will not deal with the landlords amended application to keep the security deposit. .

The landlord gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testified that this month to month tenancy started on December 01, 2013 and ended on August 30, 2014 after a settlement had been reached between the parties at a hearing held on August 13, 2014. Rent for this unit was \$800.00 per month due on the 1st of each month.

The landlord testified that the tenant failed to pay rent for July, 2014 and was served a 10 Day Notice to End Tenancy on July 02, 2014 by posting it to the tenant's door. This Notice indicated that the tenant owed rent of \$800.00 due on July 01, 2014 and had five

days to either pay the outstanding rent or file an application to dispute the Notice or the tenancy would end on July 15, 2014. The landlord testified that the tenant did not pay the rent for July, 2014 and failed to pay rent for August, 2014. The total amount of outstanding rent is \$1,600.00.

The landlord testified that they had applied for an Early End to Tenancy and a hearing was held on August 13, 2014. The landlord testified that the parties did reach a settlement and the tenant vacated the rental unit. However, the landlord found damage and cleaning to be completed in the rental unit and despite advertising the unit on their own site and other internet sites it did not re-rent for September, 2014 due to the amount of repairs and clean up required in the unit. The landlord provided photographic evidence of the interior of the unit. The landlord seeks to recover a loss of revenue for September of \$800.00.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's documentary evidence and sworn testimony before me. I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I have no evidence before me that the tenant has a right under the *Act* to deduct rent for July and August I am therefore satisfied with the undisputed testimony before me that there are rent arrears for July and August, 2014 of **\$1,600.00** and uphold the landlords claim to recover this rent.

I am also satisfied that the landlord attempted to mitigate the loss of rent for September by attempting to re-rent the unit and complete the repairs in a timely manner. I refer the

parties to the Residential Tenancy Policy Guidelines #3 which refers to a loss of rent and states, in part, that even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. I therefore find the landlord has established that the unit could not be re-rented for September and I find in favour of the landlord's claim to recover a loss of revenue for September of **\$800.00**.

As the landlord's claim has merit I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,450.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

The landlord's amended claim to keep the security and pet deposit is dismissed with leave to reapply.

The tenant's application is dismissed without leave to reapply.

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 16, 2014

Residential Tenancy Branch

