



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, OPB, MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for non-payment of rent, for the landlord to use the unit or property for another use and for a breach of an agreement with the landlord, pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, 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 2:15 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's agent ("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's agent provided an agency agreement of September 4, 2014 between her and the landlord, with her Application.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent, dated October 6, 2014 ("10 Day Notice"), was served via registered mail on October 6, 2014. She provided a Canada Post receipt and tracking number, as proof of service with her Application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on October 11, 2014, the fifth day after its registered mailing.

The landlord testified that she served the tenant with a copy of the amended application for dispute resolution hearing package ("Application") on October 18, 2014, via registered mail. She provided a Canada Post receipt and tracking number, as proof of service with her Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application on October 23, 2014, the fifth day after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent, to use the unit or property for another use or for breach of an agreement?

Is the landlord entitled to a monetary award for unpaid rent, damage or loss arising out of this tenancy?

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?

Preliminary Issues

At the outset of the hearing, the landlord advised that she was only proceeding with her application for a monetary order for unpaid rent for September and October 2014, in the total amount of \$1,840.00. She further stated that she was proceeding with her application to retain the tenant's security deposit in partial satisfaction of the monetary award requested and to recover the filing fee for this Application.

The landlord stated that she was not seeking an order of possession against the tenant, as the tenant vacated the rental unit on November 7, 2014. She also stated that she was not seeking an order for unpaid rent of \$920.00 for November 2014 or for damage or loss arising out of the tenancy, including for lost revenue of \$920.00 for November 2014 rent.

Therefore, the hearing proceeded on the issues as outlined above.

Background and Evidence

The landlord testified that this periodic tenancy began in mid-February 2014. She could not recall the exact date. Monthly rent was payable in the amount of \$920.00 on the first

day of each month. A security deposit in the amount of \$460.00 was paid by the tenant at the beginning of the tenancy in mid-February 2014. The landlord could not recall this exact date. The landlord confirmed that no written tenancy agreement exists and only an oral agreement for this tenancy is in place. The tenant vacated the unit on November 7, 2014 and did not provide a forwarding address to the landlord.

The landlord testified that the tenant did not pay rent in the amount of \$920.00 for September or October 2014, totalling \$1,840.00. She further testified that no full or partial payments have been made by the tenant towards this unpaid rent, to date. The landlord testified that the last payment made by the tenant was for August 2014 rent.

The landlord testified that a prior hearing was conducted at the Residential Tenancy Branch (RTB) where the landlord requested an order of possession against this same tenant at the same rental unit and for a monetary order for unpaid rent for September 2014 in the amount of \$920.00. As per the landlord's evidence, that application was based on a termination agreement for the tenant to vacate the premises by November 1, 2014, a copy of which was attached in her Application. The landlord could not recall the exact details or date of the hearing but advised that the landlord was unable to attend the hearing, that it was dismissed without leave to reapply, and the landlord did not request a review of the decision.

The landlord sought to retain all or a portion of the tenant's security deposit of \$460.00, which was paid for this tenancy, and which the landlord continues to hold, as per the landlord's evidence.

The landlord also applied to recover the filing fee of \$50.00 for this application from the tenant.

Analysis

The landlord's 10 Day Notice identified unpaid rent in the amount of \$1,840.00 due on October 1, 2014, for both September and October 2014, as per the landlord's testimony. The tenant failed to pay the full rent for September and October 2014 within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. The tenant did not appear at this hearing to dispute this unpaid rent amount.

The landlord testified that her prior application for a monetary order for September 2014 rent, arising out of this tenancy, and based on a termination agreement, was dismissed

without leave to reapply. Although she could not recall the details of this prior hearing or decision, I located the file online during the hearing, and informed the landlord that it was held on September 15, 2014 and that the landlord's application was dismissed without leave to reapply as the landlord did not appear at the hearing. The landlord confirmed that she was referring to the same previous hearing but stated that hearing was requesting September 2014 unpaid rent on the basis of a termination agreement, not a 10 Day Notice. She stated that the 10 Day Notice was a new request for the September 2014 rent in this current Application before me. In the previous hearing, the landlord applied for a monetary order for unpaid rent for August and September 2014, for the same tenant and landlord, at the same rental unit, arising out of this tenancy. As such, the unpaid rent for September 2014, in the amount of \$920.00, has already been dismissed by the Arbitrator who presided over that hearing, without leave to reapply. Regardless of whether the unpaid September 2014 rent arose out of a termination agreement or a 10 Day Notice, the issue has already been decided on the September 2014 rent. Therefore, I am *res judicata* and unable to award a monetary order for September 2014 rent, as the issue has already been subject to a final and binding decision by another Arbitrator appointed under the *Act*.

Accordingly, I find that the landlord is only entitled to recover October 2014 rent in the amount of \$920.00, as this issue was not previously decided at the September 15, 2014 hearing and it is properly before me at this hearing.

The landlord testified that she continues to hold the tenant's security deposit of \$460.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$510.00 against the tenant as follows:

Item	Amount
October 2014 rent	\$920.00
Less Security Deposit	-460.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$510.00

The landlord is provided with a monetary order in the amount of \$510.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: November 14, 2014

Residential Tenancy Branch

