



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF (Landlord's Application)
 CNR (Tenant's Application)

Introduction

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

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent, to keep the Tenant's security deposit, and to recover the filing fee for the cost of making the Application. The Tenant applied to cancel the notice to end tenancy.

Both parties appeared at the hearing and no issues were raised in relation to the service of the parties' Applications and written evidence prior to this hearing.

The parties were informed of the instructions for the conduct of the proceedings and no questions were raised about the process. The parties were given an opportunity to present evidence and make submissions to me in relation to the evidence provided.

Preliminary Issues

At the start of the hearing the Tenant confirmed that she had vacated the rental suite the day before this hearing. The Landlord was not aware of this and submitted that this was the first time she had learnt of this. The Landlord testified the Tenant had not informed her she had vacated the rental suite and to her knowledge the Tenant was still residing in the rental suite.

As a result, I dismissed the Tenant's Application to cancel the notice to end tenancy as the Tenant explained that she was no longer occupying the rental unit. The Landlord wanted to still proceed with her Application for an Order of Possession and her Monetary Order. As a result, I continued to hear the Landlord's Application in full.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent for January and February 2015?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

Both parties agreed that this tenancy started on July 23, 2014 on a month to month basis. A written tenancy agreement was completed and provided into written evidence. The Tenant paid the Landlord a \$325.00 security deposit on July 17, 2014 which the Landlord still retains. Rent payable under the tenancy agreement is \$650.00 on the first day of each month.

The Landlord testified that the Tenant was late paying rent for December 2014. However, on or about December 25, 2014 the Tenant paid all rent for December 2014 and \$175.00 in advance for January 2015 rent. However, the Tenant failed to pay the remaining balance of \$475.00 on January 1, 2015.

As a result, the Landlord served the Tenant personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on January 6, 2015. The Tenant confirmed receipt of the Notice on this date and it was provided by both parties into written evidence. The Notice shows an expected date of vacancy of January 16, 2015 due to \$475.00 in unpaid rent due on January 1, 2015.

The Landlord also seeks to claim loss of rent for February 2015 because according to the Landlord, the Tenant was still in possession of the rental unit and the Landlord has not been able to re-rent it out.

The Tenant acknowledged that she had not paid the balance of outstanding rent for January 2015 as claimed by the Landlord. The Tenant explained that she had not paid any rent for February, 2015 because the Notice had informed her that the tenancy was due to end on January 16, 2015 and that she should not be held responsible for paying February, 2015 rent, even though she had not vacated the rental suite until February 5, 2015.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement unless the Tenant has authority to not pay it under the Act. In this case, I accept the Landlord's undisputed evidence that the Tenant failed to pay rent for January 2015 in the amount of \$475.00 as indicated on the Notice.

Although the Tenant made an Application to dispute the Notice, the Tenant provided no grounds or authority under the Act to not pay rent for January 2015. As a result, I find that the Landlord is entitled to an Order of Possession. As the vacancy date on the Notice has now passed, the Landlord is entitled to an immediate Order of Possession.

I also find that the Landlord is entitled to unpaid rent for January 2015 in the amount of \$475.00 which the Tenant acknowledged had not been paid.

In relation to the Landlord's claim for loss of rent for February 2015 in the amount of \$650.00, I turn my mind to Policy Guideline 3 to the Act which relates to claims for rent and damage for loss of rent. In particular, the Policy Guideline explains that if a month to month tenancy is ended by the landlord for nonpayment 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.

I also take into consideration that the Tenant failed to vacate the rental suite on the vacancy date of the Notice, and did not leave until February 5, 2015 without giving any notice to the Landlord. Therefore, I find that the Tenant over held the tenancy after the vacancy date of the Notice. Furthermore, I find that on the balance of probabilities, there is not sufficient time left in the month of February, 2015 for the Landlord to re-rent the suite for February 15, 2015 in an effort to mitigate her loss. Therefore, the Landlord will likely suffer loss of rent for February, 2015.

As the Tenant breached the Act by not paying rent and has subsequently caused the Landlord to suffer loss of rent for February 2015, I find that the Tenant is responsible for February 2015 rent in the amount of \$650.00. Therefore the total amount awarded to the Landlord for unpaid and loss of rent is **\$1,125.00**.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$1,175.00**.

As the Landlord already holds the Tenant's **\$325.00** security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded the outstanding balance of **\$850.00**.

Conclusion

The Tenant has breached the Act by failing to pay rent under the tenancy agreement.

As a result, the Landlord is granted an Order of Possession effective **two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

The Landlord is allowed to keep the Tenant's security deposit.

The Landlord is also granted a Monetary Order for the balance of rent in the amount **\$850.00**, pursuant to Section 67 of the Act. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

Copies of both orders for service and enforcement are attached to the Landlord's copy of this decision.

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: February 06, 2015

Residential Tenancy Branch

