



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

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

- an Order of Possession for unpaid rent and for cause, 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 tenants' 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 tenants, pursuant to section 72.

The tenants did not attend the hearing, which lasted approximately 12 minutes. The landlord's agent, SA ("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 testified that she works for VES and she provided a letter from the landlord named in this application, authorizing VES to represent the landlord as an agent at this hearing.

The landlord testified that the tenants were both served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 24, 2015 ("10 Day Notice"), by way of posting it to the tenants' rental unit door on the same date. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on February 27, 2015, three days after its posting.

The landlord testified that the tenants were served with the landlord's amended application for dispute resolution hearing package ("Application") on March 5, 2015, by way of registered mail. The landlord provided a Canada Post tracking number orally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the

tenants were deemed served with the landlord's Application on March 10, 2015, five days after its registered mailing.

During the hearing, the landlord withdrew the landlord's Application for an order of possession, indicating that the tenants had vacated the rental unit on March 13, 2015. Accordingly, this portion of the landlord's Application is withdrawn.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord testified that this fixed term tenancy began on July 1, 2014 and was to end on July 1, 2015. Monthly rent in the amount of \$850.00 is payable on the first day of each month. A security deposit of \$425.00 and a pet damage deposit of \$175.00 were paid by the tenants and the landlord continues to retain these deposits. The landlord provided a copy of the tenancy agreement with the landlord's Application.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$4,223.00 was due on February 1, 2015. The landlord testified that this amount was in error, as \$4,250.00 was the correct amount owing for unpaid rent from October 2014 to February 2015. The notice indicates an effective move-out date of March 6, 2015.

The landlord stated that rent of \$850.00 was unpaid for each month from October 2014 to March 2015. The landlord indicated that the tenants made a rent payment of \$300.00 cash on March 13, 2015 and that a receipt was issued to the tenants for "use and occupancy only." The landlord's initial application was for \$5,100.00 but the landlord stated that \$100.00 from this amount was being abandoned in order to keep the claim at \$5,000.00 for an Application filing fee of \$50.00 rather than \$100.00. During the hearing, the landlord amended her monetary claim to seek \$4,700.00 for unpaid rent to account for the \$300.00 payment made by the tenants.

The landlord is also seeking to recover the filing fee of \$50.00 for this Application from the tenants.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$850.00 for each month from October 2014 to March 2015. The landlord amended her claim to seek \$4,700.00 total to include the \$300.00 payment made by the tenants. Therefore, I find that the landlord is entitled to \$4,700.00 in rental arrears for the above period.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants caused a loss of rent for March 2015.

The tenants were required to vacate the rental unit by March 9, 2015, the corrected effective date on the 10 Day Notice. As per the landlord's evidence, the tenants vacated the rental unit on March 13, 2015, causing loss to the landlord under section 7(1) of the *Act*. However, the landlord is required to mitigate loss as per section 7(2) of the *Act*. Rent of \$850.00 was due on March 1, 2015. Therefore, I find that the landlord is entitled to \$850.00 in rental arrears for the entire month of March 2015. I make this finding because the landlord may have to serve the tenants with the order of possession, possibly enforce the order of possession, examine the rental unit, repair any potential damage, and advertise and attempt to re-rent the unit, if applicable.

The landlord continues to hold the tenants' security deposit of \$425.00 and pet damage deposit of \$175.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain both deposits totalling \$600.00 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 the Application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$4,150.00 against the tenants as follows:

Item	Amount
Unpaid October 2014 Rent	\$850.00
Unpaid November 2014 Rent	850.00
Unpaid December 2014 Rent	850.00
Unpaid January 2015 Rent	850.00
Unpaid February 2015 Rent	850.00
Unpaid March 2015 Rent	850.00
Less Payment made by Tenants	-300.00
Less Amount Abandoned by Landlord for this Application	-100.00
Less Security Deposit	-425.00
Less Pet Damage Deposit	-175.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$4,150.00

The landlord is provided with a monetary order in the amount of \$4,150.00 in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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. The landlord's application for an order of possession for unpaid rent and for cause, is withdrawn.

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: March 24, 2015

Residential Tenancy Branch