



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HULL INVESTMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, 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, 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 the hearing, which lasted approximately 20 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 tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 16, 2015 ("10 Day Notice") on the same date. In accordance with section 88 of the *Act*, I find that the tenant was served with the 10 Day Notice on January 16, 2015.

The landlord testified that the tenant was served with the landlord's amended application for dispute resolution hearing package ("Application") on March 2, 2015, by way of registered mail. The landlord provided a Canada Post receipt and tracking number as proof of service with the landlord's Application. In accordance with sections

89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on March 7, 2015, five days after its registered mailing.

During the hearing, the landlord withdrew the landlord's Application for an order of possession. The landlord testified that the tenant vacated the rental unit on March 15, 2015 and the landlord took back possession and changed the locks of the rental unit. Accordingly, this portion of the landlord's Application is withdrawn.

During the hearing, the landlord applied to amend the name of the landlord company named in this Application. In accordance with section 64(3)(c) of the *Act*, I amend the landlord company's name, which is now correctly reflected in the style of cause on the front page of this decision.

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 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?

Background and Evidence

The landlord testified that this fixed term tenancy began on December 1, 2013 for one year after which it would transition to a month to month tenancy. Monthly rent in the amount of \$1,450.00 is payable on the first day of each month. A security deposit of \$725.00 was paid by the tenant and the landlord continues to retain this deposit. 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 \$1,100.00 was due on January 1, 2015. The notice indicates an effective move-out date of January 26, 2015. The landlord stated that \$1,100.00 is unpaid for January 2015 rent and \$1,450.00 is unpaid for each of February and March 2015 rent. The landlord's Application was made for \$3,950.00 and the landlord claimed that although the above rent totalled \$4,000.00, she was abandoning the \$50.00 claim difference, as the tenant only had notice of the \$3,950.00 sought.

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

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 tenant failed to pay \$3,950.00 for January and February 2015 rent. Therefore, I find that the landlord is entitled to \$3,950.00 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 or 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 tenant caused a loss of rent for March 2015.

The tenant was required to vacate the rental unit by January 26, 2015, the effective date on the 10 Day Notice. As per the landlord's evidence, the tenant vacated the rental unit on March 15, 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 \$1,450.00 was due on March 1, 2015. Therefore, I find that the landlord is entitled to \$1,450.00 in rental arrears for the entire month of March 2015. I make this finding because the landlord may have to serve the tenant 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 tenant's security deposit of \$725.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain this 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 the Application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,275.00 against the tenant as follows:

Item	Amount
Unpaid January 2015 Rent	\$1,100.00
Unpaid February 2015 Rent	1,450.00
Unpaid March 2015 Rent	1,450.00
Less Amount Abandoned by Landlord for this Application	-50.00
Less Security Deposit	-725.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$3,275.00

The landlord is provided with a monetary order in the amount of \$3,275.00 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.

The landlord's application for an order of possession for unpaid rent 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 31, 2015

Residential Tenancy Branch

