



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent 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 10:02 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord and her interpreter attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

During the course of the hearing, the landlord withdrew her application for an Order of Possession, testifying that the tenant has vacated the rental unit. She sought to amend her application to include cleaning costs and other move-out expenses. That application was denied based on the principle that a responding party must be informed of the case against them. This application initially sought only monetary compensation with respect to unpaid rent. The landlord had provided no notice in her application or in any other form to notify the tenant/respondent that she is now seeking a larger amount, including a claim for damages at the end of the tenancy.

The landlord testified that she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on January 15, 2015 by posting it on the tenant's rental suite door. Based on this testimony and pursuant to section 88 and 90 of the *Act*, I find the tenant deemed served with the 10 Day Notice on January 18, 2015 (3 days after its posting).

The landlord testified that she served the tenant with her Application for Dispute Resolution Hearing package on February 14, 2015 by handing it to the tenant in the presence of a witness. The landlord submitted a copy of the proof of service document signed by the witness. Based on the evidence and pursuant to section 89 of the Act, I find the tenant duly served with the Application for Dispute Resolution Hearing package.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit towards any monetary award?

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

Background and Evidence

This month to month tenancy began December 24, 2012 at which time the tenant paid a security deposit in the amount of \$325.00. The rental amount is \$650.00 payable on the first of each month. The landlord testified that the tenant vacated the rental unit on February 21, 2015.

The landlord originally applied for an Order of Possession for unpaid rent for the months of December 2014 and January 2015. The 10 Day Notice was issued referencing previous rental arrears and relying on the tenant's failure to pay January 2015 rent on January 1, 2015. The landlord testified that, over the course of December 2014 and January 2015, the tenant paid \$400.00 in rent (in 2 payments) reducing the rental arrears. The landlord testified that the tenant did not pay rent in part or in full on January 1, 2015. She testified that the tenant had not paid all of December rent by the end of that month, she made 2 payments towards December 2014 rent in January 2015 and she also did not pay rent on February 1, 2015. The rental arrears were not paid in full after the issuance of the 10 Day Notice. The tenant remained in the rental unit until February 21, 2015, leaving without providing the landlord any formal notice.

The landlord testified that, while she had amended her application to seek recovery of March 2015 rent, she no longer seeks to be compensated for March rent.

The landlord is seeking a monetary award of \$1550.00 for the rental arrears in December 2014 as well as unpaid rent in January and February 2015. She also seeks to recover the filing fee for this application.

Analysis

The undisputed evidence presented at this hearing is that the tenant failed to pay the full rent in December 2014, January 2015 or February 2015. I accept the uncontested evidence offered by the landlord that the tenant vacated the rental unit on February 21, 2015 without providing notice to the landlord. I find that the landlord is entitled to receive an order for unpaid rent of \$1550.00 for the remainder of December 2014 as well as January and February 2015. I am issuing the attached monetary order that includes the landlord's application for \$1550.00.

The landlord testified that she continues to hold a security deposit of \$325.00 plus interest from December 24, 2012 to the date of this decision for this tenancy. I will allow the landlord to retain the security deposit plus any interest in partial satisfaction of the monetary award. There is no interest payable for this period.

The landlord is entitled to a monetary order including the rental arrears and unpaid rent of \$1550.00 and, as she was successful in this application, recovery of her \$50.00 filing fee. The amount of the monetary order will be reduced by the amount of the security deposit using section 72 offsetting provisions. The landlord is entitled to a monetary order in the amount of \$1275.00.

Conclusion

The landlord withdrew her application for an order of possession.

The landlord is entitled to a monetary order in the amount of \$1275.00 for rental arrears and the application filing fee.

The landlord is entitled to retain the tenant's security deposit in the amount of \$325.00.

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 05, 2015

Residential Tenancy Branch