



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for: an Order of Possession for unpaid rent and because the Tenant had breached an agreement with the Landlord; a Monetary Order for unpaid rent; to keep the Tenant’s security deposit; for money owed for compensation for damage or loss under the *Residential Tenancy Act* (the “Act”); and to recover the filing fee.

The Tenant and the Landlord appeared for the hearing along with the Landlord’s husband. The parties provided affirmed testimony and only the Landlord provided documentary evidence prior to the hearing. The Tenant confirmed receipt of the Landlord’s Application and evidence by registered mail. Therefore, I was satisfied that the Landlord had served documents to the Tenant in accordance with Section 89(1) (a) of the Act.

The parties provided evidence in relation to the Landlord’s Application. The Tenant confirmed that he was in rental arrears for this tenancy in the amount of \$1,400.00 which was the amount claimed by the Landlord on her Application. The parties confirmed that this amount related to unpaid rent for the months of February and March 2015. The Tenant indicated that he had applied to dispute an earlier notice to end tenancy served to him by the Landlord in January 2015 and provided the file number for his Application. The Residential Tenancy Branch records indicate that the Tenant had failed to collect his hearing documents and his Application to dispute the January 2015 notice to end tenancy was deemed as abandoned. The parties explained that they had come to a mutual agreement about rental arrears for January, 2015.

When the Tenant was asked why he had not paid rent for February and April 2015, the Tenant explained that he was waiting for the outcome of this hearing. I informed the

Tenant that when a party makes an Application, the Act does not allow a tenant to withhold rent pending the outcome of a hearing.

I invited the parties to have a conversation about settling this matter through mutual agreement. The Landlord was willing to provide the Tenant with a sufficient amount of time to vacate the rental suite providing the Tenant would pay all the rental arrears for the agreed period. However, the Tenant was unable to commit to making such a large payment. However, the parties did agree to end the tenancy and deal with this dispute through mutual agreement as follows.

Settlement Agreement

Pursuant to Section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

The parties agreed that this tenancy will end on **March 31, 2015 at 1:00 p.m.** The Landlord is issued with an Order of Possession for this date which is enforceable **if** the Tenant fails to provide the Landlord with vacant possession of the rental unit. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court as an order of that court.

The Landlord agreed that while the Tenant was in rental arrears for the amount of \$1,400.00, the Tenant had overpaid for December, 2013 rent in the amount of \$300.00. Therefore, the Landlord consented to reducing the rental arrears owed to her by the Tenant in the amount of \$1,100.00.

After this agreement was made and confirmed with the Tenant, the Tenant exited out of the hearing without being excused and did not dial back in. The Landlords remained on the line to obtain further information and ask about their obligations and rights as Landlords under the Act.

In relation to the Landlord's request to keep the Tenant's security deposit, the parties confirmed that the Tenant had paid a security deposit to the Landlord on October 6, 2014 in the amount of \$350.00. Therefore, pursuant to Section 38(4) (b) of the Act, I find the Landlord is able to keep the Tenant's security deposit in partial satisfaction of the agreed amount of monies for unpaid rent outstanding as above. Therefore, this leaves a balance outstanding to the Landlord by the Tenant in the amount of \$750.00 (\$1,100.00 - \$350.00).

As the Landlord was successful in her Application, I find the Landlord is also entitled to the \$50.00 filing fee for the cost of having to make this Application. Therefore, the Landlord is entitled to a total monetary award of \$800.00

The Landlord is issued with a Monetary Order in the amount of \$800.00 which is enforceable **if** the Tenant fails to make payment to the Landlord. 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 the above orders are attached to the Landlord's copy of this decision.

Conclusion

The parties agreed to end the tenancy on March 31, 2015. The Landlord is issued with an Order of Possession effective for this date. The Landlord is also issued with a Monetary Order in the amount of \$800.00.

These orders are legally binding on the parties and this file is now closed.

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 26, 2015

Residential Tenancy Branch

