



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, 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 on October 15, 2014. The Landlord applied for a Monetary Order for unpaid rent, to keep the Tenant’s security deposit and to recover the filing fee from the Tenant.

Two agents for the Landlord and the caretaker appeared for the hearing; however only one of the agents provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Tenant during the ten minute duration of the hearing or any submission of written evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord’s agent testified that the Tenant was served with a copy of the Application and the Notice of Hearing documents for this hearing on October 17, 2014 by registered mail. The Landlord provided a copy of the Canada Post tracking report as evidence to support this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed testimony of the Landlord, I find the Tenant was served pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”). As a result, the Tenant is deemed served with the required documents on October 22, 2014. The hearing continued with the undisputed evidence of the Landlord.

Issues to be Decided

- Is the Landlord entitled to unpaid rent for September 2014 rent?
- Is the Landlord entitled to keep the Tenant’s security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord's agent testified that this tenancy started on December 1, 2012 on a month to month basis. A written tenancy agreement was completed and the Tenant's rent contribution was \$700.00 on the first day of each month. The Landlord's agent testified that the Tenant's rent contribution increased in June 2014 to \$907.00 per month.

The Tenant paid the Landlord a security deposit of \$350.00 on October 29, 2012, which the Landlord still retains. The Landlord testified that the Tenant provided proper notice to end the tenancy for September 30, 2014. However, when the Tenant's rent cheque for September 2014 was cashed on September 1, 2015 it was returned due to insufficient funds in the Tenant's account. The Landlord provided a copy of the returned cheque into written evidence.

The Landlord testified that the Tenant vacated the rental suite at the end of September 2014 without paying any rent for that month. The Tenant provided the Landlord his forwarding address on a security deposit return form disputing the rental arrears documented by the Landlord. This document was provided into written evidence. As a result, the Landlord now seeks to recover the unpaid rent for September 2014 in the amount of \$907.00.

Analysis

I accept the Landlord's oral and written evidence that the Tenant provided him with a forwarding address at the end of September 2014 which was the point at which the Tenant vacated the rental unit and the tenancy ended. The Landlord made the Application to keep the Tenant's security deposit on October 15, 2015. Therefore, I find the Landlord made the Application to keep the Tenant's security deposit within the 15 day time limit stipulated by Section 38(1) of the Act.

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement. I find that, based on the Landlord's undisputed evidence, the Tenant failed to pay rent for September 2014 and is liable for this amount.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$50.00 filing fee for the cost of having to make this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is **\$957.00**.

As the Landlord already holds \$350.00 in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to

Section 72(2) (b) of the Act. As a result, the Landlord is awarded the remaining amount of **\$607.00 (\$957.00 - \$350.00)**.

The Landlord is issued with a Monetary Order pursuant to Section 67 of the Act in the amount of **\$607.00**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if payment is not made in accordance with the Landlord's instructions. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

The Tenant breached the Act by not paying rent. Therefore, the Landlord can keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of **\$607.00**, pursuant to Section 67 of the Act.

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: May 06, 2015

Residential Tenancy Branch

