



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' 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 28 minutes. The two landlords, landlord MA ("landlord") and "landlord SA," attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlords' application for dispute resolution hearing package ("Application") on April 21, 2015, by way of registered mail. The landlords provided a Canada Post receipt and tracking number with their Application. Although the landlords indicated that the tenant vacated the rental unit around April 24, 2015, the landlords sent their Application by way of registered mail while the tenant was still residing in the rental unit on April 21, 2015, in accordance with section 89 of the *Act*. Therefore, as per sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' Application on April 26, 2015, five days after its registered mailing.

The landlord testified that he was advised by neighbours of the rental unit, that the tenant vacated the rental unit on April 24, 2015, when moving trucks were present in the

area. The landlord stated that he inspected the rental unit on April 25, 2015 and it was empty, as the tenant had already vacated. During the hearing, the landlords withdrew their Application for an order of possession for cause. Accordingly, this portion of the landlords' Application is withdrawn.

Issues to be Decided

Are the landlords 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?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this month to month tenancy began on October 1, 2014. Monthly rent in the amount of \$900.00 was payable on the first day of each month. A security deposit of \$450.00 was paid by the tenant and the landlords continue to retain this deposit. The landlords provided a copy of the tenancy agreement with their Application.

The landlords seek a monetary order of \$2,300.00 for unpaid rent. The landlord indicated that rent of \$500.00 is unpaid for February 2015, as the last payment made by the tenant was on February 27, 2015 for \$400.00. The landlord also stated that rent of \$900.00 for each of March and April 2015 is unpaid. The landlords requested the entire month of April 2015 rent, despite the fact that the tenant vacated around April 24, 2015, as rent was due on the first day of the month and they were not given any notice that the tenant was vacating. The landlords indicated that they are not seeking May or June 2015 rent from the tenant, as originally stated in their Application.

The landlords are also seeking to recover the filing fee of \$50.00 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 landlords provided undisputed evidence that the tenant failed to pay rent of \$500.00 for February 2015 and \$900.00 for March 2015. Therefore, I find that the landlords are entitled to \$1,400.00 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 landlords to prove, on a balance of probabilities, that the tenant caused a loss of rent for the entire month of April 2015.

As per section 26 of the *Act*, rent is due on the date indicated in the tenancy agreement. Rent of \$900.00 was due on April 1, 2015, as per the tenancy agreement. The tenant was still residing in the rental unit until at least April 24, 2015, as per the landlords' neighbours. I find that the landlords had to examine the rental unit on April 25, 2015 to determine that the tenant had vacated by that date and they had to repair damage to the unit, which they said was caused by the tenant. Therefore, I find that the landlords are entitled to \$900.00 in rental arrears for the entire month of April 2015.

The landlords continue to hold the tenant's security deposit of \$450.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenant's security deposit of \$450.00 in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords were successful in this Application, I find that they are entitled to recover the \$50.00 filing fee paid for the Application.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,900.00 against the tenant as follows:

Item	Amount
Unpaid February 2015 Rent	\$500.00
Unpaid March 2015 Rent	900.00
Unpaid April 2015 Rent	900.00
Less Security Deposit	-450.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$1,900.00

The landlords are provided with a monetary order in the amount of \$1,900.00 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 landlords' Application for an order of possession 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: May 12, 2015

Residential Tenancy Branch

