



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNDC 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, damage or loss 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's Application for Dispute Resolution package with Notice of hearing that was sent by registered mail to her employment address. Both parties agreed that she had provided no personal forwarding address. Both parties testified that the tenant vacated the rental unit on April 1, 2015. The landlord withdrew his application for an Order of Possession in the circumstances.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage or loss arising out of this tenancy?

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 on September 5, 2013. The rental amount of \$1450.00 was payable on the first of each month. The landlord confirmed that he continues to hold a \$700.00 security deposit paid by the tenant on August 18, 2013. The landlord submitted a copy of the tenancy agreement providing the details of the tenancy including the tenant's obligation to pay half of all utilities.

The landlord provided handwritten records outlining the payments made by the tenant towards rent from January 1, 2015 until the end of the tenancy. He referred to these calculations indicating that the tenant had outstanding rental arrears of \$1750.00 from November and December 2014. The records further indicated payments by the tenant in the months of January and February 2015. The landlord submitted that a balance of \$4400.00 remains in outstanding rent owed by the tenant. He testified that the last payment made by the tenant was February 21, 2014 in the amount of \$400.00.

The tenant testified that she had attempted to make payment arrangements with the landlord. She testified that she had been making some payments to the amount she owed to the landlord. She did not agree that the amount was as high as the landlord submitted. The tenant had no evidence to provide with respect to payments made. With respect to payments towards the rent and any dates for those payments, the tenant said that she knew a portion of February and March were outstanding but, with respect to other months, she stated, "I have no idea".

The landlord testified, supported by documentary evidence that the tenant was obliged to pay 50% of the utilities at the residential premises. The landlord provided three bills dated January 2015, February 2015 and March 2015. The bills were, respectively in the amounts of 143.83; 190.44; and 191.96. The bill supplied dated March 2015 in the amount \$191.96 shows that the previous amount of \$190.44 (February 2015) and the February 2015 bill in the amount of \$190.44 shows that the previous amount of \$143.83 had been paid in full. The landlord did not explain this discrepancy. The tenant agreed that she owed a portion of an outstanding utility bill.

The landlord testified that he has made several attempts to contact the tenant, leaving phone messages and calling her but he has had no response. The tenant testified that she called the landlord once and told him she would call him back but that he indicated he was going to file an Application for Dispute Resolution so she did not bother to call.

The tenant testified that she was "pretty sure" that the previous utility bills had been paid and that she did owe a portion for the utility bills outstanding. The tenant also testified that, over the course of the tenancy, her and her husband repaired a variety of items within the rental unit and that the landlord had never reduced her rent.

The tenant testified that, on receipt of a 10 Day Notice to End Tenancy for Unpaid Rent, she and her husband vacated the rental unit. She testified that she intends to pay the landlord for the outstanding rent and utilities but currently does not have money to do so and does not know when she will have money. She testified that her husband is off work after having a heart attack and that has had a significant impact on her family.

The landlord testified that the tenant has still not provided a forwarding address. The tenant confirmed this stating that she is currently staying with friends and cannot provide any address.

Analysis

I find that the landlord is entitled to receive an order for unpaid rent in January and February 2015. I accept the uncontested evidence offered by the landlord that the tenant has made only partial payments towards rent during her tenancy in 2015. I find, based on the landlord's testimony and the documentation provided that the tenant has rental arrears totalling \$2650.00. I am issuing the attached monetary order that includes the landlord's application for in unpaid rent for January 2015 to March 2015.

The landlord also applied for rental arrears from 2014. His documentation with respect to 2014 was far less detailed, only providing an amount of \$1750.00 owing "from last November and December" with no indication regarding payments and dates. Based on the lack of evidence to support the claim for rental arrears from 2014 and the tenant's testimony disputing a portion of the outstanding rent claimed by the landlord, I find that the landlord has only provided sufficient proof of outstanding rent in the amount of \$2650.00. The landlord is entitled to a monetary order including the amount of \$2650.00 for unpaid rent.

It is the burden of the applicant, the individual seeking to be compensated by another party to show on a balance of probabilities that their loss or damage exists, that it is the result of actions of the other party and to show evidence of the details of that loss. In this case, the landlord has provided evidence, undisputed with respect to recent amounts of unpaid rent. However, the landlord has not provided sufficient evidence to support a claim for prior years' rent.

The landlord also sought to recover rent for the month of April 2015. Testimony of both parties indicates that the tenant vacated the unit, with short prior notice, on April 1, 2015. The landlord provided little evidence to indicate what steps he took to mitigate his loss of rent in April 2015. The Residential Tenancy Policy Guidelines direct that an

individual who suffers a loss must mitigate that loss. Mitigation can take a variety of forms but requires action on the part of the injured party. In the case of the landlord, he must show that he has taken steps to ensure that he re-rents as soon as practicable. The landlord has not testified to any efforts to re-rent the property by way of advertising or other steps. Given that he had the all but 1 day in April to make the rental unit available and given that the tenants advised the landlord that they were leaving prior to that date, I find that the landlord is entitled only to a portion of rental loss for the month of April 2015. I find the landlord is entitled to 50% of April rent for a total of \$725.00.

With respect to the utilities owing as a result of this tenancy, the tenant agreed that she owed a portion of an outstanding utility bill. The tenant disputed the amount of \$489.00 sought by the landlord. In review of the landlord's bills, he has shown on a balance of probabilities that one bill in the amount of \$191.96 remains unpaid. The landlord has shown, referring to the tenancy agreement that the tenant is responsible for 50% of the utilities costs. I find the landlord entitled to \$95.98 (50% of \$191.96).

With respect to the tenant's security deposit, section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. The triggering event to start the landlord's 15 days is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord's obligation and timeline to return the deposit or make an application with respect to the deposit has not been triggered given that the tenant has yet to provide a forwarding address.

Based on the evidence before me, I find that the landlord is entitled to apply for retention of the tenant's security deposit. In accordance with *Act*, I find the landlord is entitled to retain the tenant's \$700.00 security deposit in partial satisfaction of the monetary order granted to the landlord as a result of this application.

Having been successful in this application, I find further that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary award in favour of the landlord as follows;

Item	Amount
Unpaid Rent for January – March 2015	\$2650.00

Rental Loss for April 2015	725.00
Utilities	95.98
Deduct Tenant's Security Deposit held by Landlord	-700.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2820.98

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: June 04, 2015

Residential Tenancy Branch

