



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PINNACLE INTERNATIONAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, ET, FF

Introduction

This hearing dealt with the landlord's 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, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- an early end to this tenancy and an Order of Possession, pursuant to section 56;
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 13 minutes. The landlord's agent, ME ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she is the resident manager for the landlord company named in this application and that she had authority to speak on its behalf as an agent at this hearing.

The landlord confirmed that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on April 17, 2015, by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. The Canada Post website indicates that the tenant received and signed for the package on April 28, 2015. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application.

The landlord testified that she issued a 10 Day Notice to End Tenancy for Unpaid Rent, dated April 6, 2015 ("10 Day Notice") to the tenant on the same date by way of posting to her rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice on April 9, 2015, three days after its posting.

During the hearing, the landlord withdrew the application for an order of possession for unpaid rent and an order of possession based on an early end to this tenancy. The landlord indicated that she obtained possession of the rental unit on April 28, 2015, as the tenant had already

abandoned the rental unit. Accordingly, these portions of the landlord's Application are withdrawn.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

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

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The landlord confirmed that this tenancy began on May 1, 2012 for a fixed term of one year, after which it transitioned to a month-to-month tenancy. The landlord stated that the current monthly rent is \$780.00, which is payable on the first day of each month. A security deposit of \$380.00 was paid by the tenant on April 11, 2012 and the landlord continues to retain this deposit. The landlord provided a copy of the tenancy agreement with its Application. The tenancy agreement indicates that rent of \$760.00 is payable each month. The landlord stated that she issued a legal notice of rent increase to the tenant around February 2013 to raise the rent effective on May 1, 2013, to \$780.00 per month. The landlord did not provide a copy of this notice of rent increase.

The landlord stated that the tenant abandoned the rental unit without notice and the landlord discovered that the unit was empty when she inspected it on April 28, 2015. She stated that the tenant cleaned the unit and left the keys on the counter in the unit. The landlord indicated that she was able to re-rent the unit to a new tenant as of May 1, 2015 and she was not applying for a loss of May 2015 rent against this tenant.

The 10 Day Notice indicates that rent in the amount of \$780.00 was due on April 1, 2015. The notice indicates an effective move-out date of April 15, 2015. The landlord seeks to recover \$780.00 for April 2015 rent and a \$50.00 NSF fee for April 2015. The landlord noted that the tenant's pre-authorized withdrawal for April 2015 was returned NSF. The landlord confirmed that the tenancy agreement does not indicate any charges for NSF fees. The landlord confirmed that she did not know the charges that the landlord's bank issued against the landlord for April 2015 NSF fees. The landlord stated that the \$50.00 NSF charge is routinely implemented by this landlord for NSF fees. The landlord stated that she wrote "tenant must pay NSF fee" at the bottom of the 10 Day Notice, so the tenant would be aware of the charge. The landlord is also seeking to recover the \$50.00 filing fee 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 tenant was required to vacate the rental unit by April 19, 2015, the corrected effective date on the 10 Day Notice. As per the landlord's evidence, the tenant abandoned the rental unit by April 28, 2015, causing loss to the landlord under section 7(1) of the *Act*. The landlord provided undisputed evidence that the tenant failed to pay rent for April 2015. Although the 10 Day Notice indicates that \$780.00 was due for April 2015 rent, the landlord did not provide a legal notice of rent increase to support her testimony, despite the fact that this notice should have been available to the landlord at the time of this hearing and should have been submitted prior to this hearing. While I do not disbelieve the landlord's testimony regarding the rent, oral evidence provided in the place of available documentary evidence is given less weight as it is inherently less reliable. This is especially the case where documentary evidence is available that could easily substantiate the landlord's case: the best evidence available should be provided.

On a balance of probabilities and for the reasons stated above, I find that as per the tenancy agreement, rent of \$760.00 is due each month. Therefore, I find that the landlord is entitled to \$760.00 in rental arrears for the entire month of April 2015. I make this finding because the landlord was unable to re-rent the rental unit until May 1, 2015.

On a balance of probabilities and for the reasons stated above, I find that the landlord has failed to provide sufficient evidence that it is entitled to \$50.00 for NSF fees for April 2015. The landlord did not provide a bank statement to support her testimony that the bank charged the landlord \$50.00 for NSF fees for April 2015, in accordance with section 7(1)(c) of the *Residential Tenancy Regulation* ("*Regulation*"). The landlord did not provide notice of the NSF fee in its tenancy agreement, as required by section 7(1)(d) and (2) of the *Regulation*. The landlord did not indicate the amount of the NSF fees due on the 10 Day Notice. The landlord failed to provide the best evidence that should have been available at the time of this hearing. Accordingly, I dismiss the landlord's application for a monetary order in the amount of \$50.00 for NSF fees for April 2015.

The landlord continues to hold the tenant's security deposit of \$380.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$380.00 in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this Application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for its Application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$430.00 against the tenant as follows:

Item	Amount
Unpaid April 2015 Rent	\$760.00
Less Security Deposit	-380.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$430.00

The landlord is provided with a monetary order in the amount of \$430.00 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 landlord's application for an order of possession for unpaid rent and an order of possession based on an early end to this tenancy, 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: June 01, 2015

Residential Tenancy Branch

