



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MND, MNR, MNSD, MNDC, 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. The Landlord also applied for a Monetary Order for: damage to the rental unit; unpaid rent; to keep the Tenant’s security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”); and, to recover the filing fee from the Tenant.

Preliminary Issues

An agent for the Landlord who was also the building caretaker (the “Landlord”) appeared for the hearing and provided affirmed testimony and documentary evidence prior to the hearing. The Tenant failed to appear for the eight minute duration of the hearing and provided no evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord for this hearing.

The Landlord testified that he served the Tenant with his Application and Notice of Hearing documents by personal service on May 20, 2015. In the absence of any evidence from the Tenant to dispute this, I accepted the Landlord’s oral testimony that the required documents were served in accordance with Section 89(1) (a) of the Act.

The Landlord explained that the Tenant had vacated the rental unit at some point during the end of May 2015 without paying rent. Therefore, I dismissed the Landlord’s request for an Order of Possession as this is now a moot issue. The Landlord also explained that this monetary claim related to unpaid rent only and to keep the Tenant’s security deposit which are the only items I dealt with in this hearing. The Landlord also informed me that he was not in a position to provide evidence on damages to the rental unit and other monetary issues at this point in time. Therefore the Landlord withdrew these portions of his claim and is at liberty to re-apply for these aspects of the monetary claim.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent for May 2015?
- Can the Landlord keep the Tenant's security deposit in partial satisfaction of the Landlord's claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started on March 1, 2013 for a fixed term until May 31, 2013, after which point it continued on a month to month basis. However, the Tenant vacated the property at some point during the end of May 2015. The Tenant paid the Landlord a security deposit in the amount of \$342.50 at the start of the tenancy which the Landlord still retains. The Landlord testified that rent during the end of the tenancy was payable by the Tenant in the amount of \$845.00 on the first day of each month.

The Landlord testified that the Tenant failed to pay rent in the amount of \$845.00 on May 1, 2015. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on May 11, 2015 by posting it to the Tenant's door. The Notice, provided into evidence, had an effective vacancy date of May 21, 2015 due to unpaid rent in the amount of \$845.00 payable on May 1, 2015.

The Landlord testified that the Tenant vacated the rental suite after being served with the Notice and has not paid the rental arrears. As a result, the Landlord now seeks a Monetary Order for May 2015 unpaid rent.

Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due under a tenancy agreement whether or not a landlord complies with the Act.

I accept the Landlord's undisputed written and oral evidence that the Tenant did not pay rent under the tenancy in the amount of **\$845.00** for May 2015. As a result, I find the Landlord is entitled to this amount of unpaid rent.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee. Therefore, the total amount awarded to the Landlord is **\$895.00**.

As the Landlord already holds \$342.50 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 issued with a Monetary Order for the remaining amount of **\$552.50 (\$895.00 - \$342.50)**. 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 the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

The Tenant has 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 **\$552.50**, pursuant to Section 67 of the Act.

The Landlord's claim for an Order of Possession is dismissed as the Tenant has now moved out. The Landlord withdrew his claim for monetary compensation and for damage to the rental unit and is therefore at liberty to re-apply for these aspects of his monetary claim.

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: July 07, 2015

Residential Tenancy Branch

