



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Top Vision Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, MND, MNDC, MNSD, FF

Introduction

In response to the landlord's application for an order of possession and a monetary order as compensation for unpaid rent, an *ex parte* proceeding occurred on June 15, 2015. By Interim Decision of that same date the Adjudicator found, in part, as follows:

.....I am not able to confirm service of the [10 Day] Notice to the tenants, which is a requirement of the Direct Request process, as I am unable to make inferences and assumptions within the narrow scope of the Direct Request process. I find that a participatory hearing is the proper venue that will allow for the clarification of the issues raised above and to determine how the [10 Day] Notice was served to the tenants.

I order that the direct request proceeding be reconvened in accordance with section 74 of the Act. I find that a participatory hearing to be conducted by an Arbitrator appointed under the Act is required in order to determine the details of the landlord's application.

Notices of Reconvened Hearing are enclosed with this interim decision for the applicant to serve, with all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the Act.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to rely upon at the new hearing.

Subsequently, the landlord filed an amended application for dispute resolution on July 13, 2015. In the amended application the landlord no longer seeks an order of possession. However, further to seeking a monetary order as compensation for unpaid rent, in the amended application the landlord seeks a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of all or a part of the security deposit and pet damage deposit / and recovery of the filing fee.

Additionally, only 2 of what were originally 3 respondents / tenants are named on the amended application ("SCWH" & "BH"); "GLH" is no longer included as a respondent / tenant. The omission of "GLH" on the amended application is consistent with the Adjudicator's determination in the Interim Decision that "I will consider the landlord's application against the tenants "BH" and "SH" only."

The participatory hearing was scheduled to commence by way of telephone conference call at 9:30 a.m. on Tuesday, August 18, 2015. 2 of the landlord's agents (the "landlord") attended and gave affirmed testimony. No tenants appeared.

The landlord testified that the amended application and the notice of hearing (the "hearing package") was served on each of the 2 tenants as well as on "GLH" by way of registered mail. Evidence includes the Canada Post tracking numbers for the registered mail, and the Canada Post website informs that each of the packages was "unclaimed by recipient." However, based on the documentary evidence, the affirmed / undisputed testimony of the landlord, and in consideration of sections 89 and 90 of the Act which speak, respectively, to **Special rules for certain documents** and **When documents are considered to have been received**, I find that the tenants have been duly served.

During the hearing the landlord withdrew the application for a monetary order reflecting compensation for damage to the unit, site or property, and clarified that the application for a monetary order specifically reflecting compensation of \$600.00 for damage or loss under the Act, Regulation or tenancy agreement, is also presently being withdrawn.

Issue(s) to be Decided

Whether the landlord is entitled to a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement (loss of rental income) / retention of all or part of the security deposit and pet damage deposit / and recovery of the filing fee.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from September 01, 2014 to August 31, 2015. Monthly rent of \$2,500.00 is due and payable in advance on the first day of each month. A security deposit of \$1,250.00 and a pet damage deposit of \$650.00 were collected. While there is not a copy before me in evidence, the landlord testified that a move-in condition inspection report was completed.

Arising from rent of \$1,500.00 which was unpaid when due on June 01, 2015, the landlord issued a 10 day notice to end tenancy for unpaid rent dated June 06, 2015. On June 06, 2015 the notice was personally served on female occupant "SH" (wife of male tenant "SCWH") who is an adult who resides with the tenants. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is June 17, 2015.

Subsequently, the tenants made no further payment toward rent, and they vacated the unit on July 05, 2015. A move-out condition inspection report was not completed.

The landlord testified that by letter dated July 07, 2015, the tenants provided a forwarding address for the purposes of repayment of the security deposit and pet damage deposit. A copy of this letter is not in evidence before me. The landlord testified that the address provided by the tenants is the address used by the landlord for service of the hearing packages.

Thereafter, the landlord did no advertising for new renters. Rather, the landlord undertook to clean the unit and complete certain renovations in preparation for putting the unit on the market for sale.

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated June 06, 2015. The tenants neither paid the outstanding rent, nor filed an application for dispute resolution prior to vacating the unit on July 05, 2015.

Section 26 of the Act addresses **Rules about payment and non-payment of rent**, and provides in part:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There is no evidence before me that the tenants had a right under the Act to deduct all or a portion of the rent for June 2015. Accordingly, I find that the landlord has established entitlement to compensation reflecting unpaid rent for June 2015 in the amount of **\$1,500.00**.

As earlier noted, the tenants vacated the unit on July 05, 2015. As to unpaid rent for July 2015, I find therefore that the landlord has established entitlement to compensation in the limited amount of **\$403.20**, which is calculated as follows:

$\$2,500.00 \text{ (monthly rent)} \div 31 \text{ (\# days in July)} = \$80.64 \text{ (per diem rent)}$

$\$80.64 \text{ (per diem rent)} \times 5 \text{ (\# days of occupancy in July)} = \mathbf{\$403.20}$

As the landlord undertook to prepare the house for sale after the tenants had vacated, rather than attempt to mitigate the loss of rental income by advertising for new renters, the application for unpaid rent / loss of rental income for the period from July 06 to August 31, 2015 (the date shown in the tenancy agreement as the end of the fixed term) is hereby dismissed. Related to

the foregoing, section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As the landlord has achieved a measure of success with the principal aspects of the application, I find that the landlord has also established entitlement to recovery of the **\$50.00** filing fee.

Total entitlement: \$1,953.20 (\$1,500.00 + \$403.20 + \$50.00)

I order that the landlord retain the security deposit and the pet damage deposit in the combined total amount of **\$1,900.00** (\$1,250.00 + \$650.00), and I grant the landlord a **monetary order** for the balance owed of **\$53.20** (\$1,953.20 - \$1,900.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$53.20**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

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: August 18, 2015

Residential Tenancy Branch

