



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO INN
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

I determined that the landlord erred in naming the tenant in filing this Application. The application was amended to correctly reflect the tenant's name.

The landlord indicated that she sought to amend the landlord's monetary claim to limit the claim to rent owed for July 2015. As the landlord seeks to reduce the claim, which is non-prejudicial to the tenant, I permitted the amendment.

It was brought to my attention that the parties participated in a dispute resolution hearing on August 11, 2015 to deal with a tenant's application to dispute a rent increase. The Arbitrator hearing that case made certain findings that I have considered in making this decision. The file number for the previous dispute resolution proceeding is provided on the cover page of this decision.

Issue(s) to be Decided

1. Is the landlord entitled to recover unpaid rent from the tenant for the month of July 2015 and if so, what is the amount payable?
2. Is the landlord authorized to retain the tenant's security deposit, and if so, what is the amount of the security deposit?

Background and Evidence

The tenant had been occupying unit number 51 at the residential property until he moved to unit 57 on May 1, 2015. The landlord collected rent of \$7750.00 for the month of May 2015 and

\$775.00 for the month of June 2015 according to the landlord and the person assisting the tenant at the hearing; although, the tenant stated that his rent was \$875.00 per month. I heard that the monthly rent was paid by way of a cheque from the Ministry in the amount of \$675.00 that was sent directly to the landlord and \$100.00 came from another organization and/or the tenant.

Ownership of the property changed on June 2, 2015 and the landlord appearing at the hearing today was largely relying upon limited documentation provided to her by the former landlord. The documentation the landlord was relying upon was a document that appears to be a tenancy application dated November 1, 2014 for a tenancy that was set to end May 31, 2015, which was then changed to read June 30, 2015, and the tenant would be required to vacate the rental unit at the end of the tenancy. The document does not reflect a unit number. The parties had made submissions to the Arbitrator on August 11, 2015 with respect to the content of this document.

It was undisputed that the landlord informed the tenant that his tenancy would end May 31, 2015 and then on June 2015 and that if he wanted to continue residing at the property he would be required to enter into a new tenancy for a monthly rent of \$1,200.00. The tenant filed an Application for Dispute Resolution to dispute the landlord's request for him to pay rent in the amount of \$1,200.00 per month which was heard on August 11, 2015.

Payment of \$675.00 rent was sent to the landlord by the Ministry for the month of July 2015; however, the landlord returned it so as to avoid reinstating the tenancy as the landlord as of the position that the tenancy ended June 30, 2015. The tenant vacated the property as of July 31, 2015. The landlord has not collected any rent for unit 57 for the month of July 2015.

By way of this application, the landlord seeks to recover unpaid rent of \$1,200.00 for the month of July 2015. The landlord submitted that this is the amount of rent the tenant would have had to pay for the unit under a new tenancy agreement. The tenant was agreeable to compensating the landlord the rent that he had been paying for the unit in May and June 2015.

The Arbitrator hearing the tenant's Application for Dispute Resolution on August 11, 2015 issued a written decision on August 12, 2015. The parties had not yet received a copy of the decision issued August 12, 2015. I informed that parties that the Arbitrator hearing the dispute resolution proceeding on August 11, 2015 made the following relevant findings:

- A tenancy ends when a tenant vacates a rental unit and when a tenant moves from one unit to another a new tenancy agreement forms either orally or in writing;
- A new tenancy agreement formed for unit 57 effective May 1, 2015 and it was a verbal agreement;
- The landlord had not increased the rent payable in a manner that complies with the Act and the landlord's demand for the increased rent was invalid and of no force; and,
- A security deposit of \$312.50 was transferred from the tenancy for unit 51 to the tenancy for unit 57.

The tenant and the person assisting him submitted that the amount of the security deposit paid to the landlord in 2012 for unit 51 was \$362.50. The landlord appearing at the hearing was not privy to that payment information as it before she was managing the property and she was not given banking records of the former landlord to establish the amount deposited. Rather, the landlord was relying upon the document dated November 1, 2014 which indicates the security deposit was \$312.50. The landlord also suggested that the former landlord may have refunded a portion of the security deposit to the tenant. The tenant stated that a portion of the security deposit was not refunded to him.

Analysis

Decisions issued by an Arbitrator under the Act and final and binding, subject only to available review processes. An Arbitrator has had made findings with respect to this tenancy that I am bound by as I have described in the background section of this decision.

It has already been found that a tenancy formed for unit 57 formed on May 1, 2015 by way of a verbal tenancy agreement. As such, the document dated November 1, 2014 that the landlord relied upon in submitting the tenancy was for a fixed term does not represent the tenancy agreement for unit 57. Since the parties had a verbal tenancy agreement I conclude that there was not a fixed term tenancy for unit 57 as a fixed term tenancy agreement must be in writing so as to reflect the expiry date and what is to happen at the end of the fixed term. Therefore, I reject the landlord's position that the tenancy for unit 57 ended on June 30, 2015.

Since the tenancy did not end on June 30, 2015 I find that it continued through to July 2015 on the same terms that were in effect for May 2015 and June 2015. Since the landlord did not legally increase the rent for July 2015, as found in the previous dispute resolution proceeding, I find the landlord was entitled to collect rent for the month of July 2015 in the same amount the landlord had collected for May and June 2015.

I was provided differing submissions as to the amount of rent paid or payable for May and June 2015 during this hearing. I also note that in the previous dispute resolution proceeding, the Arbitrator recorded submissions that rent was \$775.00 and \$875.00. Since the landlord submitted that the rent for May and June 2015 was the lesser amount of \$775.00; the landlord has the burden of proof; and, the lesser amount is beneficial to the respondent, I award the landlord rent in the amount of \$775.00 for the month of July 2015.

With respect to the security deposit, I was given conflicting submissions as to the amount of the security deposit. However, I defer to the decision made by the previous Arbitrator who concluded that the security deposit transferred to the tenancy for unit 57 was \$312.50. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the award for unpaid rent.

I make no award for recovery of the filing fee as I find that Ministry rent cheque had been sent to the landlord for the month of July 2015 and the landlord sent it back and the landlord's position that the tenancy ended June 30, 2015 has been found to be incorrect.

In light of the above, I provide the landlord with a Monetary Order for the net amount of \$462.50 [calculated as \$775.00 for rent less the \$312.50 security deposit]. To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and the landlord has been provided a Monetary Order for the balance of \$462.50 to serve and enforce as necessary.

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 13, 2015

Residential Tenancy Branch

