



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, FF; CNR, MNR, MNSD, OLC, O, FF

Introduction

This hearing dealt with landlord FS's ("landlord") application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent and breach of an agreement, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

This hearing also dealt with the tenants' cross-application against both landlords, pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated June 8, 2015 ("10 Day Notice"), pursuant to section 46;
- a monetary order for the cost of emergency repairs to the rental unit, pursuant to section 33;
- authorization to obtain a return of the security deposit, pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- other unspecified remedies;
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The landlord's agent, BB ("landlord's agent") and the tenant RO ("tenant") attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The landlord's agent confirmed that he had authority to represent the landlord named in these applications, as an agent at this hearing. The tenant confirmed that he had authority to represent the other tenant, "tenant QG," named in these applications, as an agent at this hearing.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing notice ("Landlord's Application"), which the landlord's agent said was sent by way of registered mail on July 23, 2015. The tenant stated that he had not received the landlord's written evidence package. Given that this matter settled, I do not make a determination regarding service of the landlord's written evidence package. The tenant confirmed that he was prepared to proceed with this hearing, despite the fact that he was not served with the landlord's written evidence package.

The tenant confirmed that the landlord was not served with the tenants' application for dispute resolution hearing package ("Tenants' Application"). At the outset of the hearing, I read aloud the tenants' application for relief and confirmed that the tenants had not submitted any written evidence with their application. The landlord's agent confirmed that he was willing to proceed with the hearing on the basis of the Tenants' Application, despite the fact that the landlord was not served with it.

Accordingly, I proceeded with this hearing on the basis of both the landlord agent's and the tenant's consent. Both declined the opportunity to adjourn this hearing in order for them to exchange applications and written evidence.

Preliminary Issues

Both parties confirmed that the landlord is the true landlord for this rental unit, as he obtained ownership and possession of the rental unit, as well as the rights and responsibilities of a landlord for this tenancy, in December 2014. The landlord's agent confirmed that the landlord purchased the property from "landlord RB," who is the other landlord named in the Tenants' Application only. Therefore, this decision, settlement and order are legal, binding and enforceable against all parties, with the exception of landlord RB ("both parties").

In accordance with section 64(3)(c) of the *Act*, I amend the Tenants' Application to correct the spelling of the landlords' and tenants' names, as both parties confirmed the spelling of the names during the hearing. I do not find any prejudice to either party in doing so, as both parties agreed that this settlement agreement is legal, binding and enforceable against both parties.

At the outset of the hearing, the tenant confirmed that both tenants had vacated the rental unit by July 1, 2015. Therefore, the landlord's agent withdrew the Landlord's

Application for an order of possession for unpaid rent and breach of an agreement. The tenant also withdrew the Tenants' Application to cancel the landlord's 10 Day Notice. Accordingly, these portions of both parties' application are withdrawn.

During the course of the hearing, the tenant withdrew the Tenants' Application for a monetary order for the cost of emergency repairs, an order for the landlord to comply with the *Act, Regulation* or tenancy agreement, other unspecified relief and recovery of the \$50.00 filing fee. Accordingly, these portions of the Tenants' Application are withdrawn.

Issues to be Decided

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

Are the tenants entitled to a monetary award for the return of their security deposit?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

Both parties agreed that this month-to-month tenancy began on July 1, 2013 and ended on July 1, 2015. Monthly rent in the amount of \$1,500.00 was payable on the first day of each month. The landlord's agent agreed that the written tenancy agreement indicated \$1,450.00 was due for rent, but he had no knowledge as to whether a valid notice of rent increase had been issued to the tenants to increase the rent to \$1,500.00 per month. The tenant confirmed that the tenants had not received a valid notice of rent increase from the landlord. A security deposit of \$725.00 was paid by the tenants and the landlord continues to retain this deposit.

In the Landlord's Application, the landlord sought \$4,900.00 total for unpaid rent, including \$400.00 for April 2015 rent and \$1,500.00 rent for each month from May to July 2015. The landlord also sought to recover the \$50.00 filing fee. The tenant confirmed that the tenants paid rent in full for April and May but not for June or July 2015. The tenant noted that rent was paid in cash, as cheques were refused by the landlord, and that receipts were not issued by the landlord. The tenants sought a return of their security deposit of \$725.00 in their Application.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, both parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties, with the exception of landlord RB, agreed to the following final and binding settlement of all issues with respect to this entire tenancy:

1. Both parties agreed that the landlord will retain the tenants' entire security deposit of \$725.00;
2. Both parties agreed that the tenants will pay \$1,100.00 to the landlord by September 15, 2015, by way of certified cheque or money order payable to the landlord only, at the landlord's address for service outlined in both applications;
3. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the Landlord's Application at this hearing and any issues arising out of this tenancy;
4. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the Tenants' Application at this hearing and any issues arising out of this tenancy;
5. Both parties agreed that they will not initiate any further claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise a full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties gave verbal sworn affirmations at the hearing that they understood and agreed to the above settlement terms, free of any duress or coercion. Both parties confirmed that they understood that the above terms are legal, final, binding and enforceable, settling all aspects of this dispute and arising out of this tenancy. The landlord's agent and the tenant confirmed that they were authorized to make this settlement as agents on behalf of the landlord and tenant QG.

Conclusion

To give effect to the settlement reached between the parties, I order the landlord to retain the tenants' entire security deposit of \$725.00.

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I issue a monetary Order in the landlord's favour in the amount of \$1,100.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenants fail to abide by condition #2

of the above monetary agreement. The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order in the event that the tenant(s) fail to abide by condition #2 of the above monetary agreement. Should the tenant(s) 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 breach of an agreement, is withdrawn.

The Tenants' Application for cancellation of the landlord's 10 Day Notice, a monetary order for the cost of emergency repairs, an order for the landlord to comply with the *Act*, *Regulation* or tenancy agreement, other unspecified relief and recovery of the \$50.00 filing fee, 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: August 07, 2015

Residential Tenancy Branch

