



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPC MND MNR MNDC ET FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities and for cause, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for damages to the unit, site or property, and to recover the cost of the filing fee.

The landlord and his legal counsel attended the teleconference hearing. During the hearing the landlord was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlord testified that the Notice of Hearing, Application and documentary evidence was served on the tenant by registered mail on August 12, 2015 to the service address provided on the tenant's previous Application against the landlord, the file number of which has been included on the cover page of this decision for ease of reference.

The landlord provided a registered mail tracking number in evidence and confirmed that the name and address of the tenant matched the name and address of the tenant provided by the tenant in her application, the hearing of which was on August 20, 2015. Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the *Act*. The landlord stated that the registered mail package was returned to the landlord as "unclaimed" as of September 4, 2015, which is supported by the online registered mail tracking website.

I find the tenant was deemed served on the fifth day after mailing, in accordance with the *Act*, which would be August 17, 2015. I note that refusal or neglect on the part of the tenant to pick up a registered mail package does not constitute grounds for a Review Consideration.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord requested to amend his application to correct an inadvertent spelling error of his surname. In addition, the landlord requested to add the full street name of the rental unit to his application, which had been inadvertently omitted. I find that both requests of the landlord are reasonable as both amendments are of obvious inadvertent typographical errors or omissions. Therefore, pursuant to section 64(3) of the *Act* I permit both amendments to be made to the landlord's application.

In addition to the above, the landlord clarified that the tenant vacated the rental unit in late July 2015 and as a result, he was no longer seeking an order of possession or to end the tenancy early to obtain an order of possession and requested to withdraw those portions of his application. The landlord's request was permitted as I find that such a request does not prejudice the tenant in any way and will not be considered as a result.

The landlord also requested to withdraw his claim for damages during the hearing, and focus only his claim for unpaid rent at this proceeding. The landlord's request to withdraw his claim for damages to the rental unit, site or property was permitted as I find that this does not prejudice the tenant. That landlord is at liberty to reapply for damages to the unit, site or property, if any; however, I note that by withdrawing any portion of this application does not extend any applicable timelines under the *Act*.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act* for unpaid rent, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The landlord testified that a verbal, month to month tenancy between the parties began on May 1, 2015. Monthly rent in the amount \$400 was due on the third Wednesday of each month during the tenancy. The tenant did not pay a security deposit or pet damage deposit during the tenancy.

The landlord testified that he is claiming for \$400 for unpaid rent for July 2015 as the tenant vacated the rental unit sometime in late July 2015, without paying rent for July. The landlord affirmed that the tenant continued to occupy the rental unit as of the due date of July's rent, the third Wednesday of July, and eventually moved out after that day, however is unsure of the specific date at the end of July when the tenant vacated the rental unit. The landlord is also seeking the recovery of the cost of his filing fee.

Analysis

Based on the undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

Claim for unpaid rent – The landlord testified that the tenant failed to pay \$400 in rent for July 2015 even though the tenant continued to occupy the rental unit beyond the due date of the third Wednesday of July 2015 before vacating the rental unit later in July. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the above, I find the tenant breached section 26 of the *Act* by failing to pay a total of \$400 in rent, as claimed by the landlord for the month of July 2015. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$400** in unpaid rent for July 2015.

As the landlord's application had merit, I grant the landlord the recovery of the **\$50** filing fee.

Monetary Order – I find that the landlord has established a total monetary claim of \$450 comprised of \$400 in unpaid rent, plus the \$50 filing fee. I grant the landlord a monetary order pursuant to section 67 of the *Act* for the amount owing by the tenant to the landlord in the amount of **\$450**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I caution the landlord to comply with section 13 of the *Act* and section 12 of the *Residential Tenancy Act Regulation* in the future which requires that a tenancy agreement be in writing.

Conclusion

The landlord's amended application is successful.

The landlord has established a total monetary claim of \$450 as indicated above. The landlord has been granted a monetary order under section 67 in the amount of \$450. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord has been cautioned to comply with section 13 of the *Act* and section 12 of the *Residential Tenancy Act Regulation* in the future which requires that a tenancy agreement be in writing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 26, 2015

Residential Tenancy Branch

