



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, MNR, MNSD, FF

Introduction

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

- an order of possession as a fixed-term tenancy had ended pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 0942 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that the landlord served the tenant with the dispute resolution package on 2 September 2015 by registered mail. The agent provided me with a Canada Post tracking number for the mailing. The agent testified that the mailing was sent to the rental unit. The tenant resided at the rental unit at the time of the mailing. The agent testified that the mailing was returned unclaimed.

Residential Tenancy Policy Guideline, "12. Service Provisions" sets out that service cannot be avoided by failing to retrieve the mailing:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

In accordance with sections 89(1) and 90 of the Act, the tenant was deemed served with the dispute resolution package on 7 September 2015, the fifth day after its mailing.

At the hearing, the agent informed me that the tenant vacated the rental unit on or about 14 September 2015. The agent discovered this after provided notice to enter to see if the rental unit had been vacated. As possession of the rental unit has returned to the landlord it is unnecessary to consider the order of possession issue. On this basis, I decline to consider the order of possession issue as it is moot.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 May 2015. The parties entered into a fixed-term tenancy agreement for a tenancy ending 31 July 2015. Monthly rent of \$750.00 was due on the first of the month. The tenant vacated the rental unit on or about 14 September 2015. The landlord continues to hold the tenant's security deposit in the amount of \$375.00, which was collected 11 October 2014.

The agent testified that the parties had entered into a short fixed-term tenancy on a probationary basis as there were concerns with the tenant's conduct in his initial fixed-term tenancy. The agent testified that the landlord had agreed to extend the tenancy until 31 August 2015; however, the tenant declined to agree to this extension.

The agent testified that the tenant last paid rent for July 2015. The agent testified that the tenant did not pay for his use and occupancy of the rental unit for August 2015.

Analysis

Pursuant to section 57 of the Act, a landlord may make a claim for compensation from an overholding tenant. The tenant did not pay for the use and occupancy of the rental unit for August. As the tenant occupied the unit beyond the termination of the tenancy, the landlord is entitled to compensation for the tenant's use and occupancy. The landlord is entitled to a monetary order in the amount of \$750.00 for the tenant's use of the rental unit for the month of August 2015.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$425.00 under the following terms:

| Item | Amount |
|---|-----------------|
| Unpaid August Use and Occupancy | \$750.00 |
| Offset Security Deposit Amount | -375.00 |
| Recovery of Filing Fee for this Application | 50.00 |
| Total Monetary Order | \$425.00 |

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: November 05, 2015

Residential Tenancy Branch

