



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BABIC ENTERPRIZES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, 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 for unpaid rent 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 0943 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 confirmed she had authority to act on behalf of the corporate landlord.

The agent testified that the landlord served the tenant with the dispute resolution package on 30 October 2015 by registered mail. The agent provided me with a Canada Post tracking number for this mailing. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The agent testified that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 2 October 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenants were/was deemed served with the 10 Day Notice pursuant to sections 88 and 90 of the Act.

Amendment to Landlord's Application

At the hearing the agent informed me that the tenant vacated the rental unit on or before 5 November 2015. The agent asked to amend the landlord's application to withdraw the request for an order of possession as it was no longer required.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

As there is no prejudice to the tenant in allowing this amendment, the landlord's application is amended as requested.

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 July 2014. The parties entered into a written tenancy agreement on 13 June 2014. Monthly rent was \$900.00 and was due on the first. The landlord continues to hold a security deposit in the amount of \$900.00, which was collected at the beginning of this tenancy.

On 2 October 2015 the landlord issued the 10 Day Notice. The 10 Day Notice was dated 2 October 2015 and set out an effective date of 12 October 2015. The 10 Day Notice set out that it was given as the tenant had failed to pay rent that was due 1 October 2015. The agent testified that the tenant paid \$600.00 towards her rent arrears.

The agent testified that the tenant did not vacate the rental unit on the effective date of the 10 Day Notice. The agent testified that on or about 5 November 2015 the caretaker for the residential property noticed the door to the rental unit was open and that the unit was vacant. The agent testified that the landlord is unaware of the exact date the tenant vacated the rental unit.

The landlord claims a rental loss for November 2015. The agent testified that the tenant overheld the rental unit and thus the landlord could not re-rent the unit for 1 November 2015. The agent testified that the rental unit required extensive repairs and cleaning before it could be re-rented. The agent testified that the landlord has a continuous advertisement in a local paper to seek new tenants for their various properties. The agent testified that the rental unit was re-rented for 1 December 2015.

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant was responsible for paying her rent in full when it was due under the tenancy agreement. On the basis of the uncontested evidence of the landlord, the tenant did not pay rent when it was due under the tenancy agreement. There is no evidence before me that indicates that the tenant was permitted to make any deductions from her rent. On this basis, I find that the landlord is entitled to the remainder of October's rent: \$300.00.

Pursuant to subsection 57(3) of the Act a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. As, pursuant to an order of the Residential Tenancy Branch made 9 December 2014, the tenancy has ended, the landlord is not entitled to "rent" as such; however, the landlord is entitled to compensation from the tenant for her use and occupancy of the rental unit. Further, pursuant to section 67 of the Act a landlord is entitled to be compensated for his or her rental loss.

On the basis of the landlord's uncontested evidence, I find that the tenant overheld the rental unit for the period 1 to 5 November 2015 by failing to return possession of the rental unit to the landlord. Pursuant to subsection 57(3) of the Act, I find that the landlord is entitled to compensation for the tenant's use and occupancy of the rental unit for that period. Further, I find that by overholding the rental unit, the tenant caused the landlord to experience a rental loss for November as the landlord was unable to commence a new tenancy 1 November 2015. The landlord is entitled to compensation for this rental loss for the period 6 to 30 November 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 \$350.00 under the following terms:

Item	Amount
Unpaid October Rent	\$300.00
November Overholding / Rent Loss	900.00
Offset Security Deposit Amount	-900.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$350.00

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: December 29, 2015

Residential Tenancy Branch

