



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, CNR, RR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord confirmed receipt of the tenant's notice of hearing package and his submitted documentary evidence. The tenant has confirmed receipt of the landlord's submitted documentary evidence. I find based upon the undisputed affirmed testimony of both parties that the landlord is deemed served with the notice of hearing package and both parties are deemed served with the submitted documentary evidence by the other party as per section 90 of the Act.

Both parties clarified that the address for dispute filed by each party, "Bsmt.2" = "Bsmt. West."

Both parties confirmed in their direct testimony that the tenant had vacated the rental unit on December 31, 2015 and that both parties were withdrawing the portions of their application related to possession of the rental unit. The tenant also withdrew his request to reduce rent for repairs, services or facilities agreed upon but not provided. As such no further action is required for those portions of the applications.

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied for a monetary order for money owed or compensation for damage or loss. As this section of the tenant's application was unrelated to the main section which is to cancel the notice to end tenancy issued for unpaid rent, I dismiss this section of the tenant's claim with leave to reapply.

The hearing was reconvened on March 30, 2016 with both parties present by conference call.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

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

This tenancy began on June 15, 2015 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated June 6, 2015. The monthly rent is \$880.00 payable on the 1st day of each month. A security deposit of \$440.00 and a pet damage deposit of \$440.00 were paid on June 15, 2015.

The landlord stated that the tenant was served with 10 Day Notice dated December 4, 2015 by posting it to the rental unit door. The tenant confirmed this in his written submissions and has submitted a photograph of the 10 Day Notice dated December 4, 2015 posted to the rental unit door on December 5, 2015. The 10 Day Notice states that the tenant failed to pay rent of \$900.00 that was due on December 1, 2015 and an effective end of tenancy date of December 14, 2015.

The landlord stated that the tenant failed to pay rent of \$900.00 that was due on December 1, 2015. The landlord clarified that the monthly rent of \$880.00 was increased to \$900.00.

The tenant confirmed in his direct testimony that, "No, did not..." The tenant stated that he moved out by the end of December 2015.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant failed to pay rent as required.

The landlord provided undisputed affirmed testimony that the tenant failed to pay rent of \$900.00 for December 2015. The tenant provided undisputed affirmed testimony that he did not pay the rent of December 2015. On this basis, I accept the undisputed affirmed evidence and find that the tenant failed to pay rent of \$900.00 that was owed for December 2015. The landlord has established a monetary claim of \$900.00 for unpaid rent.

The landlord applied to keep the tenant's security (\$440.00) and pet damage (\$440.00) deposits. I allow the landlord to retain the security and pet damage deposits in partial satisfaction of the monetary award. No interest is payable over this period.

The landlord having been successful in entitled to recovery of the \$50.00 filing fee.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$70.00 under the following terms:

Item	Amount
Unpaid December 2015 Rent	\$900.00
Offset Security Deposit	-440.00
Offset Pet Deposit	-440.00
Recovery of Filing Fee	50.00
Total Monetary Order	\$70.00

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 orders of that Court.

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: March 30, 2016

Residential Tenancy Branch

