



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO R HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNR MNSD MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on March 10, 2016. The Landlord filed seeking a Monetary Order for: unpaid rent; money owed or compensation for damage or loss under the *Act*, Regulation, or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by an Agent for the Landlord (the Landlord). No one was in attendance at the hearing on behalf of the Tenant. The Landlord provided affirmed testimony that the Tenant was served notice of this application and this hearing by registered mail March 10, 2016. Canada Post tracking receipts were submitted in the Landlords' documentary evidence.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail.

Based on the undisputed evidence of the Landlord, I find the Tenant was deemed served notice of this application and hearing on March 15, 2016, five days after they were mailed, in accordance with Section 90 of the *Act*. Accordingly, I continued to hear the undisputed evidence of the Landlord, in absence of the Tenant.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a month to month written tenancy agreement that began on April 1, 2015 and was for a subsidized rental unit. Market rent was initially \$985.00 payable on the first of each month and was subsequently increased to \$1,036.00 per month. On March 2, 2012 the Tenant paid \$492.50 as the security deposit.

The Landlord testified that when the Tenant failed to provide the annual subsidy application documents she was served a 2 Month Notice to end tenancy on June 26, 2015. That Notice listed an effective date of August 31, 2015. In addition, the Tenant's rent increased to the market value of \$1,036.00 effective September 1, 2015.

The Landlord submitted evidence that the Tenant remained in possession of the rental unit until September 21, 2015 and she did not pay the \$540.00 subsidized rent that was due August 1, 2015 or the \$1,036.00 rent that was due September 1, 2015.

The Landlord stated the Tenant has never provided them with a forwarding address in writing. They were however, able to contact the Tenant via telephone and attempted to work towards a payment plan with the Tenant. The Landlord asserted they entered into a verbal agreement with the Tenant. That agreement was the Tenant would pay the Landlord the \$540.00 owed for August 2015 plus \$726.00 for September 2015 which was a daily per-diem rate for the 21 days the Tenant occupied the rental unit in September.

Upon finalization of the above mentioned verbal agreement the Landlord obtained the Tenant's service address over the phone, in order to send her the re-payment agreement. The Tenant was sent the re-payment agreement and has failed to respond. As a result, the Landlord now seeks a monetary order.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order

Under section 26 of the Act, a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this Act. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

I accept the Landlord's undisputed evidence the Tenant failed to pay their August 1, 2015 rent and the daily per-diem rent for September 2015; which I find to be in breach of section 26 of the *Act*. Accordingly, I grant the Landlord's application for unpaid rent in the amount of **\$1,266.00** (\$540.00+ \$726.00)

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$492.50 security deposit since March 2, 2012.

I find this monetary award meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid Aug. 2015 and Sept. 2015 Rent	\$1,266.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$1,366.00
LESS: Security Deposit \$492.50 + Interest \$0.00	<u>-492.50</u>
Offset amount due to the Landlord	<u>\$ 873.50</u>

The Tenant is hereby ordered to pay the Landlord the offset amount of \$873.50, forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$873.50** which may be enforced through Small Claims Court upon service to the Tenants.

Conclusion

The Landlord has succeeded with their application and was awarded monetary compensation of \$1,366.00. That award was offset against the Tenant's security deposit leaving a balance owed to the Landlords of **\$873.50**.

This decision is final, legally binding, 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: July 08, 2016

Residential Tenancy Branch