



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REGIER PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

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; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, although I waited until 929 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord's agents attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent JR (the agent) provided all testimony and presented all evidence in support of the landlord's application. The agents confirmed that they had full authority to act on behalf of the corporate landlord.

The agent testified that he served the tenant with the dispute resolution package. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package.

Scope of Application

At the hearing, the agent informed me that an order of possession was issued by a previous arbitrator at a hearing in relation to the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice). The tenant's review of this application was dismissed on 5 August 2016. The landlord's correction of the order was granted on 10 August 2016.

Res judicata is the legal doctrine preventing, among others, the rehearing of an issue that has been previously settled by a judicial decision. There are three elements to this doctrine:

- an earlier decision has been made on the issue,
- a final judgment on the merits has been made, and
- the involvement of the same parties.

As a final decision on the merits of this 10 Day Notice was issued and that prior application involved the same corporate landlord and same tenant, I find that I am bound by the prior decision and may not consider the same issue for a second time. On this basis, I decline to proceed with the landlord's application for an order of possession.

At the hearing, the agent informed me that the tenant did not make any payment towards her use and occupancy of the rental unit for the period 15 July 2016 to 14 August 2016. The agent asked to amend the landlord's application to include compensation in the amount of \$870.00 for this period.

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

As the tenant reasonably ought to have known that these amounts were owed if she continued to occupy the rental unit, I have allowed the amendment as there is no undue prejudice to the tenant.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

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 15 February 2016. The prior landlord and the tenant entered into a written tenancy agreement on 15 February 2016. Monthly rent in the amount of \$870.00 is due on the fifteenth. The landlord continues to hold the tenant's security deposit in the amount of \$435.00.

The landlord purchased the residential property from the prior landlord in early 2016.

On 16 June 2016, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 16 June 2016 and set out an effective date of 30 June 2016. The 10 Day Notice set out that the tenant failed to pay \$3,105.00 in rent that was due on 15 June 2016. The rental arrears included \$870.00 from March, \$870.00 from April, \$495.00 from May and \$870.00 from June. The rental arrears include the tenant's partial payment in the amount of \$375.00 made 17 May 2016.

The agent testified that he was not aware of any reason that would entitle the tenant to deduct any amount from rent. The agent testified that the only payment the landlord received was the payment made 17 May 2016.

The landlord claims for rental arrears totaling \$3,975.00:

Item	Amount
Unpaid Rent Due 15 March	\$870.00
Unpaid Rent Due 15 April	870.00
Unpaid Rent Due 15 May	495.00
Unpaid Rent Due 15 June	870.00
Unpaid Rent Due 15 July	870.00
Total Rent Arrears	\$3,975.00

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.

There is no evidence before me that indicates that the tenant was entitled to deduct any amount from rent.

The landlord has provided sworn and uncontested evidence that the tenant has unpaid rental arrears totaling \$3,975.00. I find that the landlord has proven its entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

Pursuant to paragraph 72(2)(b), I offset the amount of the monetary award against the amount of the tenant's security deposit in which case the value of the tenant's security deposit is reduced to nil.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,540.00 under the following terms:

Item	Amount
Unpaid Rent	\$3,975.00
Offset Security Deposit Amount	-435.00
Total Monetary Order	\$3,540.00

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: August 10, 2016

Residential Tenancy Branch