



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The landlord and tenant D.G. (the “tenant”) attended at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord confirmed that as the tenants vacated the rental unit in September 2016, the landlord was no longer seeking an order of possession. As a result, the request for an order of possession was not considered further as part of the landlord’s Application.

During the hearing the landlord mentioned a claim for damages which was not part of this Application and would have been premature regardless as the tenant was still occupying the rental unit at the time the landlord submitted their Application. As a result, the landlord was reminded that damages were not part of this Application and that the landlord is at liberty to apply for damages at a later date, subject to the timelines defined in the *Act*.

In addition to the above, due to service issues, the name of the second respondent tenant T.K. was removed from the Application pursuant to section 64(3) of the *Act* as I

was not satisfied that T.K. was sufficiently served in a manner provided for under the *Act*. The landlord confirmed that he wanted the hearing to continue with tenant D.G. only who signed for and accepted the registered mail package that was mailed to her. Given the above, any resulting monetary order will not name T.K. given the above.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The parties agreed that a fixed-term one year tenancy began on November 1, 2015 and was scheduled to expire on November 1, 2016. The parties disputed the date the tenancy ended. The tenant stated that the rental unit keys were returned to the landlord on September 14, 2016 while the landlord stated that it was either the 16th or 17th of September 2016. The parties agreed that monthly rent during the tenancy was \$2,000.00 per month and was due on the first day of each month. The parties also agreed that the tenants did not pay a security deposit or pet damage deposit.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid September 2016 rent	\$2,000.00
2. Loss of October 2016 rent	\$2,000.00
3. Recovery of cost of the filing fee	\$100.00
TOTAL	\$4,100.00

Regarding items 1 and, the landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2016 (the "10 Day Notice") was served and that the tenant did not dispute the 10 Day Notice. The tenant confirmed that she left some personal items in the rental unit and did not leave it empty at the end of the tenancy. The landlord testified that once the tenant left the unit on either September 16 or 17, 2016, the landlord advertised the rental unit on a popular online website where rental units are listed. The landlord was able to re-rent the rental unit for November 1, 2016. Given the above, the tenancy ended based on an undisputed 10 Day Notice where rent owing in the amount of \$2,000.00 was not paid within 5 days of being served

with the 10 Day Notice. The effective vacancy date of the 10 Day Notice was September 12, 2016. A copy of the 10 Day Notice was submitted in evidence.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

Claim for unpaid rent and loss of rent – There is no dispute that a fixed term tenancy began on November 1, 2015 and was scheduled to end on November 1, 2016. There is also no dispute that rent for September 2016 was not paid by the tenants. Section 26 of the *Act* requires that rent be paid on the date that it is due which in the matter before was the first of each month in the amount of \$2,000.00.

Given the above, I find the tenant breached section 26 of the *Act* by failing to pay \$2,000.00 rent on September 1, 2016. As a result, I grant the landlord **\$2,000.00** for unpaid September 2016 rent. Section 7 of the *Act* states:

Liability for not complying with this Act or a tenancy agreement

- 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.
- (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.**

[my emphasis added]

Based on the above, I accept that the landlord made attempts to re-rent the rental unit in a timely manner and was able to find new renters effective November 1, 2016. As the tenancy was a fixed term tenancy, I find the tenant owes the landlord **\$2,000.00** for loss of October 2016 rent.

As the landlord has succeeded with his application, I grant the landlord the recovery of the **\$100.00** filing fee.

Given the above, I find the landlord has met the burden of proof and has established a monetary claim of **\$4,100.00** comprised of \$4,000.00 in unpaid rent and loss of rent as described above, plus the recovery of the cost of the \$100.00 filing fee.

I grant the landlord a monetary order under section 67 in the total amount owing by the tenant to the landlord in the amount of **\$4,100.00**.

Conclusion

The landlord's application is successful.

The landlord has been granted a monetary order under section 67 in the total amount owing by the tenant to the landlord in the amount of \$4,100.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: December 5, 2016

Residential Tenancy Branch