



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary award, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "first hearing" on December 5, 2016 lasted approximately 24 minutes and the "second hearing" on January 23, 2017 lasted approximately 37 minutes.

The landlord's agent, AS attended both hearings. The landlord's agent, JO attended the first hearing only. The landlord's agent, EP attended the second hearing only. The tenant attended both hearings. At both hearings, all parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Landlord JO confirmed that he was the property manager, landlord AS confirmed that she was the resident manager, and landlord EP confirmed that he was the property manager for the landlord company named in this application. All three agents confirmed that they had authority to speak on behalf of the landlord company at both hearings.

Both parties confirmed that the tenant had already vacated the rental unit. The landlord confirmed that no order of possession was required against the tenant.

Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on December 5, 2016 was adjourned because the tenant did not receive the landlord's application documents and did not have a chance to respond. At the first hearing, I provided specific instructions to both parties to serve and re-serve evidence in accordance with specific deadlines. I issued an interim decision, dated December 8, 2016, adjourning the first hearing and outlining these specific instructions. Only service of documents was discussed at the first hearing, no merits were reviewed regarding the landlord's application.

At the second hearing, the tenant confirmed receipt of the landlord's application for dispute resolution hearing package around December 28, or 29, 2016. He said that the application package was postmarked for December 27, 2016. In my interim decision, I had ordered the landlord to serve the tenant with the application package by December 9, 2016. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's entire application and written evidence package. The tenant consented to proceeding with the second hearing, despite the fact that he did not receive the application in a timely manner. He said that he had almost one month to review the application and written evidence prior to the hearing.

The landlord confirmed that no further written evidence was submitted for the second hearing, after the application package was sent to the tenant. The tenant confirmed that he did not submit any written evidence for either hearing. Accordingly, I proceeded with the second hearing on the basis of both parties' consent.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. The tenant agreed to pay the landlord a total of \$1,000.00 according to the following terms:
 - a. the payments will begin on February 15, 2017 and end on August 15, 2017;

- b. the payments will be made on the 15th day of each month during the above time period;
 - c. the first six monthly payments from February 15, 2017 to July 15, 2017 will be in the amount of \$150.00 each;
 - d. the last payment on August 15, 2017 will be in the amount of \$100.00;
 - e. both parties have agreed on the method of payments during this hearing;
2. Both parties agreed that the landlord will retain the tenant's entire security deposit of \$664.00 and the tenant's FOB deposit of \$100.00;
 3. The landlord agreed that this settlement agreement constitutes a final and binding resolution of the landlord's application, including the \$100.00 filing fee, at this hearing.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

Conclusion

In order to implement the above settlement reached and as advised to both parties during the hearing, I issue a monetary Order in the landlord's favour in the amount of \$1,000.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant does not abide by condition #1 of the above agreement. The tenant must be served with a copy of this Order as soon as possible after the tenant does not abide by condition #1 of the above agreement. Should the tenant 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.

I order the landlord to retain the tenant's entire security deposit of \$664.00 and the tenant's FOB deposit of \$100.00. 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: January 23, 2017

Residential Tenancy Branch

