



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") filed on December 24, 2016 for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenant's security deposit and to recover the filing fee from the Tenant. The Landlord amended the Application on December 29, 2016 for loss of January 2017 rent.

Both parties appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Application and the amended Application by registered mail. The Tenant confirmed that he had not provided any documentary evidence prior to this hearing. The Tenant denied receipt of the Landlord's documentary evidence. However, I did not consider the Landlord's documentary evidence in making findings in this case.

At the start of the hearing, the parties confirmed that the tenancy had ended and the Tenant declared that he had moved out of the rental unit. The Landlord confirmed that she had received possession of the rental unit but that the Tenant had left a large amount of personal property which was going to have to be removed by the Landlord. As a result, I dismissed the Landlord's Application for an Order of Possession.

The hearing continued to hear the Landlord's monetary claim. The hearing process was explained and both parties were given a full opportunity to present evidence, make submissions to me and to cross examine the other party on the evidence provided.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent, if so for how much?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The parties agreed that this tenancy started on July 1, 2015 for a fixed term of one year which was then intended to continue on a month to month basis. The Tenant paid \$800.00 as a security deposit on June 15, 2015 which the Landlord still retains. Rent under the agreement was established at the start of the tenancy in the amount of \$1,600.00 payable on the first day of each month. The rent was increased during the tenancy to \$2,572.50.

The Landlord testified that pursuant to a previous settlement agreement, which was crafted by a different Arbitrator during a hearing held with the same parties on January 3, 2017 under a different file number detailed on the front page of this Decision, the parties had agreed to mutually end the tenancy on January 15, 2017.

The Landlord testified that by the time she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice") on December 6, 2016, the Tenant was in rental arrears for the amount of \$8,872.50.

The Landlord testified that she wanted to claim the rental arrears and unpaid rent for January 2017 because the Tenant had not moved out of the rental unit by the agreed date of January 15, 2017. The Landlord's total monetary claim was for \$11,445.00.

The Tenant did not dispute the Landlord's testimony with regards to the rental arrears outstanding by the end of December 2016. The Tenant stated that he was continually asked by the Landlord's brother when he was moving out of the rental unit. The Tenant testified that on January 15, 2017 he sent the Landlord's brother a Facebook message informing them that he was out of the rental unit and was abandoning his personal property because he needed to meet the terms of the January 3, 2017 agreement.

The Landlord testified that the January 3, 2017 settlement agreement stated that if the Tenant failed to remove all of his personal belongings from the rental unit there was a requirement for the Tenant to pay all of January 2017 rent. The Landlord was asked whether I could refer to the January 3, 2017 agreement on the Residential Tenancy Branch computer systems in order to point me to the term of the agreement which allowed for this. I have reproduced the terms of that agreement below for reference in this Decision as follows:

- *"The parties agreed that this tenancy will end on January 15, 2017 at which time the tenant will provide vacant possession of the rental unit to the landlord;*

- *The landlord agreed that the tenant is only responsible for any outstanding rent prior to January 01, 2017 and rent from January 01, to January 15, 2017. The matter of outstanding rent will be dealt with at a hearing to be held on January 23, 2017;*
- *The tenant agreed to ensure that all his personal belongings will be removed from the rental; unit by January 15, 2017;*
- *The parties agreed to organise a mutually convenient time and date prior to January 15, 2017 for the tenant to gain access to the lower unit to remove any personal belongings contained within that unit;*
- *The parties agreed the landlord will be issued with an Order of Possession effective on January 16, 2017 to be served upon the tenant in the event the tenant does not vacate the rental unit as agreed.”*

[Reproduced as written]

The Landlord then stated that while the settlement agreement did not specially state this, the verbal agreement between the parties in the January 3, 2017 hearing was that the Tenant was responsible for the entire January 2017 rent if he failed to remove all of his personal property from the rental unit. The Landlord confirmed that the Tenant had sent a message declaring that he had abandoned his personal property and had left the rental unit on January 15, 2017.

The Tenant disputed this testimony stating that the agreement was that he would only be responsible for paying pro-rated rent from January 1, 2017 to January 15, 2017.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement. I accept the evidence before me that the Tenant owes the Landlord unpaid rent of \$8,872.50. The Tenant provided insufficient evidence to show that this amount was not owed to the Landlord. With respect to the Landlord's monetary claim for January 2017 rent, I turn to the settlement agreement made by the parties on January 3, 2017.

I find the second point of the agreement above makes it clear that the Tenant was only responsible for paying rent up until January 15, 2017 on the provision that he moved out of the rental unit. I find the agreement did not stipulate that this hinged on the Tenant's

requirement to have all his personal belongings removed from the rental unit. In addition, I find the Tenant did move out of the rental unit on January 15, 2017 pursuant to the Facebook notice he gave to the Landlord which she received, albeit that he abandoned his personal property. The Landlord is now required to deal with the Tenant's personal property under the provisions of the Act.

Therefore, in addition to the \$8,872.50 rental arrears, I am only prepared to award the Landlord for half of January 2017 rent of \$1,286.25 pursuant to the January 3, 2017 settlement agreement.

As the Landlord has been successful in her monetary claim, I find the Landlord is also entitled to recover the \$100.00 Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$10,258.75.

As the Landlord already holds the Tenant's \$800.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the outstanding balance of rent claimed in the amount of \$9,458.75. This order must be served on the Tenant and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court. Copies of the order for service and enforcement are attached to the Landlord's copy of this Decision.

Conclusion

The Landlord's Application for an Order of Possession is dismissed as the Tenant has moved out of the rental unit. The Tenant breached the Act by failing to pay rent. The Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of \$9,458.75. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 24, 2017

Residential Tenancy Branch