



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE CEDARS MOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MND, 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 January 12, 2017 for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied for a Monetary Order for damage to the rental suite, to retain the Tenants' security deposit, and to recover the filing fee from the Tenant.

An agent for the corporate Landlord (the "Landlord") appeared for the hearing and provided affirmed testimony as well as documentary and digital evidence prior to the hearing. The Landlord testified that she served the Tenant personally with a copy of the Application and the Hearing Package on January 19, 2017. There was no appearance for the Tenant during the 36 minute hearing and there was no submission of evidence from the Tenant prior to this hearing. Based on the oral testimony of the Landlord, and in the absence of any evidence from the Tenant to dispute this, I find the Landlord served the Tenant with the required documents for this hearing in accordance with Section 89(1) (a) of the *Residential Tenancy Act* (the "Act").

Preliminary Issues

On February 1, 2017 a hearing took place with me to hear the Tenant's Application to cancel a notice to end tenancy for unpaid rent for this tenancy. The Tenant failed to appear for that hearing and as a result, I issued the Landlord with an Order of Possession dated February 1, 2017. The file number of that hearing appears on the front page of this Decision. Therefore, I dismissed the Landlord's request in this hearing for an Order of Possession as this had been granted at the previous hearing.

With respect to the Landlord's monetary claim made on January 12, 2017, the Landlord disclosed a monetary claim comprising of two months of unpaid rent and \$78.75 for a plumbing receipt for a flood event alleged to have been caused by the Tenant.

In the interim time period before this hearing took place, the Landlord filed additional evidence to increase the claim amount for flood damage caused by the Tenant comprising of more plumbing receipts and replacement of a carpet. The Landlord did not provide invoice evidence with respect to the replacement of the carpet and had not completed an amendment of the Application for the increased amount of the claim as required by Rule 4 of the Residential Tenancy Branch Rules of Procedure. Therefore, I was unable to consider the Landlord's increased monetary claim.

However, in the absence of the Tenant for this hearing, I provided the Landlord leave to re-apply for the additional amounts of damages for which the Tenant had not been put on proper notice of through an amendment to the Application. As a result, the Landlord decided that it was better to deal with all of the claims for damage to the rental unit in one claim rather than have to split them in this hearing and repeat the evidence over two hearings. As the Landlord's monetary claim for damages to the rental unit of \$78.75 disclosed in this Application was substantially linked to the Landlord's intended monetary claim for all the remaining damages, I allowed the Landlord to withdraw this portion of her monetary claim and provided her with leave to re-apply. Therefore, I only dealt with the Landlord's monetary claim for unpaid rent in this hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for the rental arrears?
- Is the Landlord entitled to keep all of the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy began on July 1, 2016 for a fixed term of six months after which it continued on a month to month basis. Rent under the written tenancy agreement was established in the amount of \$700.00 payable by the Tenant on the first day of each month. However, the Landlord explained that this was lowered to \$650.00 per month due to financial difficulties the Tenant was having in paying this amount of rent after the tenancy started. The Tenant paid a \$350.00 security deposit by July 15, 2016, which the Landlord still retains.

The Landlord testified that the Tenant failed to pay rent for January 2017. As a result, the Tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on January 12, 2017 which was the subject of the February 1, 2017 hearing. The Landlord testified that although the vacancy date of the 10 Day Notice was January 11, 2017, the Tenant did not vacate the rental unit until

February 3, 2017 without paying any rent for February 2017. As a result, the Landlord now seeks to recover two months of unpaid rent in the amount of \$1,300.00

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act. Residential Tenancy Branch Policy Guideline 3 states that *“In a month to month tenancy, if the tenancy is ended by the Landlord for nonpayment of rent, the Landlord may recover any loss of rent suffered for the next month as a notice given by the Tenant during the month would not end the tenancy until the subsequent month.”*

Based on the foregoing evidence and the provisions of the Act, I accept the undisputed evidence that the Tenant has failed to pay rent to the Landlord. Therefore, the Landlord is entitled to the rental arrears in the amount of \$1,300.00. As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee for the cost of this Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,400.00.

As the Landlord already holds the Tenant's \$350.00 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. The Landlord is issued with a Monetary Order for the remaining balance of \$1,050.00. 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 this order are attached to the Landlord's copy of this Decision.

Conclusion

The Tenant vacated the rental unit without paying rent. The Landlord is able to keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of \$1,050.00. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 15, 2017

Residential Tenancy Branch