



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF, MT, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66; and
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent (the landlord) stated that the tenants were served with the notice of hearing package on January 20, 2017 via Canada Post Registered Mail. The tenants confirmed receipt of the landlord's notice of hearing package in this manner. The landlord stated that the tenants were served with the amended application for dispute resolution and the first submitted documentary evidence package on January 27, 2017 via Canada Post Registered Mail. The tenant confirmed receipt of this package as claimed by the landlord. The landlord stated that the second documentary evidence

package was not served to the tenants. As such, I find that this portion of the landlord's documentary evidence is excluded as the landlord has failed to properly serve the tenants as per the Act. The tenants provided no documentary evidence. I accept the undisputed affirmed evidence of both parties and find that the tenants have been properly served with the notice of dispute resolution hearing package, the amended application for dispute and the landlord's first submitted documentary evidence package as per sections 88 and 89 of the Act.

At the outset both parties confirmed that the tenants have since vacated the rental unit. The tenants stated that as such the tenants are cancelling their application for dispute. The landlords also confirmed that as possession is no longer an issue, the landlord is also cancelling their application for an order of possession. The hearing shall proceed on the landlord's monetary claim for unpaid rent and recovery of the filing fee. Both parties confirmed that no security deposit or pet damage deposits were paid to the landlord and that the landlord has withdrawn his request to retain the security and pet damage deposits.

At the end of the hearing the tenant, A.A. provided a new mailing address for delivery of this decision as both tenants no longer reside at the rental address.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on December 26, 2016 on a fixed term tenancy ending on September 30, 2017 for 9 months as per the signed tenancy agreement dated December 24, 2016. The monthly rent was \$2,500.00 payable on the 1st day of each month. Although listed, both parties confirmed that no security deposit of \$1,250.00 and no pet damage deposit of \$750.00 were paid. The landlord clarified that the tenants had paid for both deposits by cheque for which the bank has returned as "cannot trace". It was further clarified through a letter from the bank which states that the account upon which the cheques were issued was closed on March 24, 2015.

Both parties confirmed that the landlord served the tenants with the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 10, 2017 in person on January 10, 2017. The 10 Day Notice sets out that the tenants failed to pay rent of \$2,500.00 = \$300.00 that was due on January 1, 2017. I also note that it states that the \$300.00 is for December 2016 rent and 2 deposits totalling, \$4,800.00. The 10 Day Notice also sets out an effective end of tenancy date of January 19, 2017.

The landlord clarified that he seeks a monetary claim of:

\$300.00	Unpaid Rent, December 2016 (Prorated, Dec 26-31)
\$500.00	Unpaid Rent, January 2017 (\$2,500.00 less \$2,000.00 paid by tenant on January 16, 2017).

The tenant, A.A. confirmed in her direct testimony that the January 2017 rent was not paid as claimed by the landlord. The landlord clarified that the tenants provided a rent cheque for January 2017 which was returned by the bank as “cannot trace” like the security and pet damage deposits cheque. Both parties confirmed that \$2,000.00 in cash was paid to the landlord on January 16, 2017 for which the landlord has applied to the \$2,500.00 rent owed for January 2017.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, both parties have confirmed that the tenants failed to pay rent of \$300.00 for December 2016 and that there were also rental arrears of \$500.00 for January 2017. I accept the undisputed affirmed evidence of both parties and find that the landlord has justified his monetary claim of \$800.00.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted a monetary order for \$900.00.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 15, 2017

Residential Tenancy Branch