



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, MNR, MNSD, FF

Introduction

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

- an order of possession based on the tenant's written notice to end the tenancy pursuant to section 55;
- a monetary order for unpaid rent 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 the filing fee for this application from the tenant pursuant to section 72.

The tenant and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, the tenant confirmed receipt of the landlord's application and evidence. The tenant also confirmed that he did not provide any documentary evidence for this hearing. As the tenant did not raise any issue regarding service of the application or the evidence, I find that the tenant was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Order of Possession

The parties agreed that the tenant vacated the rental unit on January 31, 2017. Consequently the landlord is not seeking an order of possession and this portion of the landlord's claim is dismissed without leave to reapply.

Preliminary Issue – Settlement Agreement

Section 63 of the *Act* provides that if the parties settle their dispute during a hearing the Director may record the settlement in the form of a decision or an order. Pursuant to

the above provision, discussion between the parties during the hearing led to a partial settlement / resolution. Specifically, the parties agreed and confirmed as follows;

1. the tenant and landlord agree that the tenant will pay \$329.70 in cleaning costs and \$10.00 in a lightbulb expense for a total of \$339.70 to the landlord by way of cheque no later than March 31, 2017;
2. The landlord will receive a monetary order in the agreed amount of \$339.70, which order will become null and of no effect if the tenant pays this amount by March 31, 2017.

So as to perfect this settlement agreement, the landlord is given a monetary order to reflect the agreed amount of \$339.70. Should it be necessary, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the tenancy agreement, the tenancy began on February 1, 2016 on a fixed term until January 31, 2017 at which time the tenancy continued on a month to month basis. Rent in the amount of \$1,730.00 was payable on the first each month. The tenant remitted a security deposit in the amount of \$850.00 at the start of the tenancy.

On January 13, 2017 the tenant provided written notice to the landlord that he would be vacating the rental unit February 15, 2017. The tenant vacated the rental unit January 31, 2017.

Upon receipt of the tenant's notification to end the tenancy, the landlord advertised the rental unit and did not secure a tenancy for February 1, 2017. It is the tenant's position that he gave adequate notice to vacate and is not required to pay February rent. The tenant put a stop payment on the February rent cheque. The landlord seeks to recover the February rent in the amount of \$1,730.00.

Analysis

The tenancy agreement clearly states that at the end of the fixed term the tenancy will continue unless the parties agree on a new fixed term, or the tenant gives legal written notice to end the tenancy.

Section 45 of the *Act*, requires a tenant that seeks to end a periodic tenancy, to give written notice a full month before rent is due under the tenancy agreement.

Because the tenancy agreement indicates that rent is due on or before the first calendar day of the month, the tenant was obligated to give notice on or before December 31, 2016 to successfully end the tenancy January 31, 2017. As the tenant's notice was dated January 13, 2017, I find this notice serves to end the tenancy February 28, 2017, not January 31, 2017 or February 15, 2017. Based on the above, I find the tenant did not provide proper notice to end the tenancy, and therefore find the tenant did not end this tenancy in accordance with the *Act*.

Pursuant to the Residential Tenancy Policy Guideline, #5, when a tenant ends the tenancy agreement contrary to the provisions of the *Act*, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit. Based on the landlord's testimony I find the landlord mitigated his loss by advertising the unit promptly but despite this could not secure a tenancy for February 1, 2017. Therefore I find that the landlord is entitled to \$1,730.00 for February rent.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,830.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$850.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$980.00.

Conclusion

The landlord's claim for an order of possession is dismissed without leave to reapply.

The tenant and landlord agree that the tenant will pay \$329.70 in cleaning costs and \$10.00 in a lightbulb expense for a total of \$339.70 to the landlord by way of cheque no later than March 31, 2017. So as to perfect this settlement agreement, the landlord is given a monetary order to reflect the agreed amount of \$339.70. Should it be

necessary, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I issue a monetary order in the landlord's favour in the amount of \$980.00 against the tenant.

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: March 13, 2017

Residential Tenancy Branch