



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, 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 for unpaid rent 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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided affirmed testimony. The tenant, D.H. (the tenant) attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenants were both served with the notice of hearing package and the submitted documentary evidence in person on February 27, 2017. The tenant stated that no documentary evidence was submitted. The tenant confirmed receipt of the landlord's notice of hearing package and the submitted documentary evidence, except a copy of the 10 Day Notice. The tenant did confirm in her direct testimony that the 10 Day Notice was served to her on February 10, 2017. I accept the undisputed affirmed testimony of both parties and find that the tenants were sufficiently served as per section 90 of the Act.

During the hearing both parties confirmed that the tenants had vacated the rental unit and as such an order of possession was no longer required. No further action is required for this portion of the application.

At the end of the hearing the tenant provided a new mailing address for both herself and the co-tenant, B.M. As such, the mailing address for both tenants shall be updated.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

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 applicant's claim and my findings are set out below.

The landlord stated that he had a verbal tenancy agreement with both the tenants to pay a monthly rent of \$1,200.00.

Both parties confirmed that the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent on February 10, 2017, but have failed to provide a copy. The landlord stated that the tenants have not paid any rent for February and March 2017 owing \$2,400.00.

The landlord seeks an order of possession for unpaid rent and an amended monetary order for unpaid rent of \$2,400.00. The landlord clarified that the tenant's failed to pay rent of \$1,200.00 for February 2017 and \$1,200.00 for March 2017.

In support of these claims the landlord has submitted copies of 6 etransfer email receipts for payments made on:

\$1,200.00	October 9, 2016
\$500.00	November 5, 2016
\$700.00	November 18, 2016
\$600.00	December 5, 2016
\$600.00	December 30, 2016
\$600.00	January 13, 2017

The tenant, D.H. provided undisputed affirmed testimony that she and the other tenant, B.M. share the 3 bedroom rental unit. The tenant stated she normally gives her portion, \$600.00 to B.M. and he pays the landlord via etransfer. The tenant, D.H. confirmed that she received the 10 Day Notice on February 10, 2017 in which it stated that the tenants failed to pay rent of \$1,200.00 for February 2017. The tenant, D.H. stated that she confirmed that she read the notice and communicated with B.M. The tenant, D.H.

stated that she is not aware of the rent being paid nor if an application for dispute was filed. The tenant, D.H. stated that they vacated the rental unit on March 3, 2017.

The landlord disputes the tenant's claims stating that no notice was given to vacate the rental unit nor have the keys to the rental unit returned to the landlord.

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, I find based upon the affirmed testimony of both parties that the landlord did serve to the tenants a 10 Day Notice for Unpaid Rent. The tenant, D.H. confirmed that the landlord served to her a 10 Day Notice on February 10, 2017 which stated that the tenants failed to pay rent of \$1,200.00 for February 2017. I find on a balance of probabilities that the tenants failed to pay rent of \$1,200.00 for February 2017 as the tenants have not provided any evidence of a rent payment for February. On this basis, I find that the tenants' failed to pay February 2017 rent of \$1,200.00.

The tenant provided affirmed testimony that the tenants vacated the rental unit on March 3, 2017, while the landlord provided affirmed testimony that the tenants were still in possession of the rental unit until March 27, 2017. The landlord also provided undisputed affirmed testimony that no notice to vacate the premises was provided nor the keys to the rental unit returned. I accept the evidence of both parties and find that no rent was paid to the landlord for March 2017 and that the tenant failed to provide proper notice to vacate the rental premises. On this basis, I find on a balance of probabilities that the tenants failed to pay March 2017 rent of \$1,200.00.

The landlord has established a total monetary claim of \$2,400.00. I find that as the landlord has been successful in his application that he is entitled to recovery of the \$100.00 filing fee.

I decline to make any order regarding the landlord's request to retain the security deposit as no evidence was provided by either party regarding the security deposit.

Conclusion

The landlord is granted a monetary order for \$2,500.00.

This order must be served upon the tenants. Should the tenants fail to comply with the 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: March 29, 2017

Residential Tenancy Branch