



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord 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; and to recover the filing fee from the tenant for the cost of this application pursuant to section 72.

The tenant did not attend. The landlord attended and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent was personally served to the tenant on March 6, 2017. The landlord also testified that he personally served the tenant with the Application for Dispute Resolution ("ADR") hearing package on March 13, 2017. Based on the sworn, undisputed evidence of the landlord, I accept that the tenant was duly served with the 10 Day Notice on March 6, 2017 and duly served with the landlord's ADR package on March 13, 2017 pursuant to section 88 and 89 of the Act respectively.

At the outset of this hearing, the landlord testified that the tenant had vacated the rental unit on March 30, 2017. Therefore, **the landlord withdrew his application for an Order of Possession as well as his application to recover a security deposit from the tenant.** At this hearing, the landlord sought a monetary order as well as the recovery of his filing fee. Based on the evidence before me including the tenant's failure to attend this hearing, **I dismiss the tenant's application to cancel the notice to end tenancy without leave to reapply.**

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?
Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This tenancy agreement began approximately 3 years prior to the current landlord's purchase of the property. The landlord testified that he took possession of the property on approximately April 2, 2015. The landlord testified that the tenant did not pay a security deposit at any point in

the tenancy. He provided a copy of the purchase documents for the property to show that no security deposit amount was transferred to him from the previous landlord.

The landlord testified that, when he took possession of the property, he and the tenant (already residing on the property) verbally agreed to continue the tenancy with a monthly rental amount of \$900.00. The landlord testified that there had been no previous written agreement with the former landlord. He testified that he did not create a written tenancy agreement with the existing tenant. The landlord submitted correspondence between himself and the tenant as well as banking information indicating deposits/payments from the tenant to support his claim regarding outstanding rent. The purchase of property documents also refer to "rent" for this residential property.

The landlord testified that the tenant was the subject of a disability claim and he had allowed the tenant to delay payment of *full* rent for a series of months while he awaited a decision on his claim. The correspondence reflected the agreement between parties for the tenant to pay a portion of rent as he was able and to pay the balance when his benefits were reinstated.

The landlord testified that he issued a 10 Day Notice to End Tenancy for Unpaid Rent on March 6, 2017 indicating an unpaid rental amount of \$5250.00. The landlord testified that, after the receipt of the hearing package, the tenant advised the landlord he would vacate the residence and meet with the landlord to discuss the rental arrears. The landlord testified that the tenant did not pay the outstanding rental amount of \$5250.00 as indicated on the 10 Day Notice after receipt of the notice to end tenancy. The landlord testified that he is currently owed \$6050.00 in unpaid rent which included the monthly rental amount for the month of April 2017. The landlord testified that the tenant remained in the rental unit until March 30, 2017 and that the tenant had not paid full rent since the end of 2016. The landlord testified that the tenant did not provide sufficient notice, only advising the landlord approximately 2 weeks prior to vacating the rental unit. The landlord testified that he was unable to re-rent the unit for the month of April 2017.

The landlord testified that the tenant did not pay outstanding rent of \$5250.00 as indicated on the 10 Day Notice. The landlord testified that the tenant occasionally made partial payments of the full rental amount and that he repeatedly told the tenant he would be required to provide the whole amount of rent to continue the tenancy. The landlord provided his banking records as well as his logs of rent payments to show the amounts paid by the tenant and the amounts outstanding. The landlord submits that the tenant currently owes \$6050.00 because he did not pay rent in March 2017 in full prior to vacating the property and the tenant did not provide notice so that the landlord could re-rent the unit for the month of April 2017. I have detailed the landlord's amended request for a monetary order with his detailed tenant payment information as follows,

Rent (\$900.00) Due Dates	Amount Partial Rent Paid	<i>Date Partial Rent Paid</i>	Rent Owed

Nov 2015	\$450.00	Nov 24	\$450.00
Dec 2015	450.00	Dec 9	450.00
Jan 2016	450.00	Dec 23	450.00
Feb 2016	450.00	Jan 5	450.00
Mar 2016	650.00	Jan 27	250.00
Apr 2016	700.00	Feb 25	200.00
May 2016	200.00	Apr 5	700.00
Jun 2016	400.00	Apr 28	500.00
July 2016	450.00	May 27	450.00
Aug 2016	550.00	Jun 28	350.00
Sept 2016	0	0	900.00
Oct 2016	400.00	Aug 2	500.00
Nov 2016	550.00	Aug 29	350.00
Dec 2016	450.00	Sept 13	450.00
Jan 2017	500.00	Sept 29	400.00
Mar 2017	500.00	Oct 28	400.00
Apr 2017 * *rental loss	600.00	Nov 28	300.00
<i>Additional Pmt</i>	<i>400.00</i>	<i>Jan 9</i>	<i>-400.00</i>
<i>Additional Pmt</i>	<i>600.00</i>	<i>Jan 27</i>	<i>-600.00</i>
<i>Additional Pmt</i>	<i>500.00</i>	<i>Feb 27</i>	<i>-500.00</i>
Monetary Order Sought by LI	\$9250.00		\$6050.00

Analysis

The landlord sought to recover \$6050.00 in unpaid rent. The landlord gave undisputed testimony clearly articulating the amounts owed and the particularization of those amounts. The landlord's testimony with respect to rent was documented and undisputed as the tenant failed to attend this hearing, despite the personal service of documents including notice of this hearing by the landlord to the tenant on March 13, 2017 (prior to the tenant vacating the rental unit). The landlord also provided documentary evidence to prove the amount of rental arrears owed by the tenant. I accept the landlord's undisputed testimony that the tenant owes rental arrears to the landlord totalling \$5150.00.

Based on the testimony of the landlord as well as his documentary evidence, I find that the landlord had not waived the requirement that the tenant pay full rent: the correspondence between the parties reflected an agreement for the tenant to pay a portion of rent and to pay the balance when his benefits were reinstated. The reinstatement of his benefits was prolonged through no fault of the landlord and the landlord testified that the delay in receiving full rent became an unreasonable length of time. He testified that partial payment was to continue for approximately 6 months and that he was regularly told by the tenant after 6 months that he would receive the outstanding rent "any day".

To continue to allow the tenant to pay partial rent would have made an increasingly large outstanding rental amount for the tenant and an unreasonably large amount of unpaid rent and income for the landlord. I find that the landlord has shown that the tenant is the party responsible for the outstanding rent. I find that the landlord did not waiver in his position that the rent was to be paid in full however the landlord provided a six month grace period during which the tenant was entitled to pay partial rent, establish and complete his disability claim. I find that the landlord regularly enforced his position that the partial rental payments did not result in an assurance or promise that the tenancy would continue without the payment of full rent. I find that the landlord clearly indicated to the tenant that the rent was to be paid in full.

Section 26(1) of the Act establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." I find that the tenant has not met his obligations under section 26 of the Act with respect to the payment of rent. I find that the landlord is entitled to recover \$5150.00 in outstanding rent from the tenant.

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 (in this case, the landlord) 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 tenant. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the landlord has provided evidence to show he has lost rent for the month of April 2017. As of the date of the filing of this application, the landlord sought to end the tenancy. This information combined with the evidence provided by the landlord shows that the tenant did not provide sufficient notice to the landlord to allow him to re-rent the unit in April 2017. I find that the landlord is entitled to recover \$900.00 in rental loss for the month of April 2017.

I find that the landlord is entitled to a monetary order in the amount of \$6050.00 as well as an additional \$100.00 for his filing fee as he was successful in his application.

Conclusion

The landlord's applications for an Order of Possession and application to retain the tenant's security deposit are withdrawn.

The tenant's application to cancel the landlord's Notice to End Tenancy is dismissed.

I issue a monetary order to the landlord against the tenant as follows,

Item	Amount
Total Unpaid Rent	\$5150.00
Rental loss	900.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$6150.00

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this 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: April 18, 2017

Residential Tenancy Branch