



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANTHEM EASTERN HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and 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 security deposit and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 15 minutes. The corporate landlord was represented by its agent (the "landlord") who was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent dated April 4, 2017 (the "10 Day Notice") was served on the tenant by posting on the rental unit door on that date. I find that the 10 Day Notice was deemed served on the tenants on April 7, 2017, three days after posting, in accordance with sections 88 and 90 of the *Act*.

The landlord testified that the landlord's application for dispute resolution dated April 19, 2017 was served on the tenants by registered mail on April 21, 2017. The landlord provided two Canada Post tracking numbers as evidence of service. I find that the tenants were deemed served with the landlord's application for dispute resolution and evidentiary materials in accordance with sections 88, 89 and 90 of the *Act* on April 26, 2017, five days after mailing.

At the outset of the hearing the landlord said that the tenants have abandoned the rental unit and withdrew the portion of their application seeking an Order of Possession. The landlord made an application to amend the amount of the monetary claim sought. The landlord testified that since the application was filed the landlord has received estimates and invoices for the cleaning and repairs required of the rental unit. Pursuant to section 64(3)(c) of the Act and Rule 4.2 of the Rules of Procedure, as I find that it could be reasonably anticipated that the amount of the monetary claim would increase as the landlord received accurate information about the loss, I amend the landlord's application to increase the landlord's monetary claim from \$1,835.00 to \$7,620.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and damages as claimed?
Is the landlord entitled to retain all or a portion of the security deposit for this tenancy?
Is the landlord entitled to recover the filing fee of this application from the tenants?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This periodic tenancy began in May, 2015. The monthly rent is \$1,235.00 payable on the first of the month. A security deposit of \$602.50 was paid by the tenants at the start of the tenancy and still held by the landlord.

The landlord testified that the tenant failed to pay the monthly rent for April, 2017 and the 10 Day Notice was issued. The landlord said that the tenants made partial payment of \$635.00 on April 15, 2017. The tenants also requested that the landlord utilize the security deposit for the outstanding rent. The landlord did not consent to the use of the security deposit for rent.

The tenants also gave notice to the landlord on April 15, 2017 that they intended to end the tenancy on April 30, 2017. The tenants moved out of the rental unit and failed to participate in a move out condition inspection report despite the landlord's attempt to schedule an inspection together.

The landlord submitted into written evidence copies of estimates, receipts and invoices for the cleaning and repairs required after the tenants vacated the rental unit. The landlord also submitted into evidence digital photos of the rental unit condition. The landlord testified that the total cost of the repairs and cleaning is \$5,785.00.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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.

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. I find that the tenants were obligated to pay the monthly rent in the amount of \$1,235.00. I accept the landlord's evidence that the tenants failed to pay the full amount of rent for April, 2017. I find that the tenant's notice on April 15, 2017 of their intention to end the tenancy on April 30, 2017, provides less notice than required under section 45(1) of the *Act*. Consequently, I find that the landlord is entitled to the equivalent of the rent for the month of May, 2017. I issue a monetary award in the landlord's favour in the amount of \$1,835.00, the total amount of rental arrear for this tenancy.

I accept the landlord's evidence that the tenant caused damage to the rental unit that required repairs and cleaning. I accept the landlord's written evidence that the cost of the repairs and cleaning is \$5,785.00. I, therefore, issue a monetary award in the landlord's favour for \$5,785.00, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$602.50 in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The portion of the landlord's application seeking an Order of Possession is withdrawn.

I issue a monetary order in the landlord's favour in the amount of \$7,117.50 under the following terms, which allows the landlord to recover unpaid rent, the damage and loss suffered and the filing fee for their application:

Item	Amount
Unpaid Rent April, 2017	\$600.00
Unpaid Rent May, 2017	\$1,235.00
Repairs and Cleaning	\$5,785.00
Filing Fees	\$100.00
Less Security Deposit	-\$602.50
Total Monetary Order	\$7,117.50

The tenants must be served with this Order as soon as possible. Should the tenants 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: May 25, 2017

Residential Tenancy Branch