



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 an Application for Dispute Resolution filed April 27, 2017, and amended May 12, 2017, both filed by the Landlord for an Order of Possession and a Monetary Order based on a 10 Day Notice to End Tenancy for Unpaid Rent issued on April 4, 2017 (the “Notice”), a Monetary Order for cleaning of the rental unit, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord’s representatives, S.H. (Tenant Services Coordinator) and C.C. (Director of Property Services) appeared at the hearing. S.H. spoke on behalf of the Landlord, gave affirmed testimony and was provided the opportunity to present the Landlord’s evidence orally and in written and documentary form, and to make submissions to me.

S.H. testified that she served the Tenant with the Notice of Hearing and their Application on May 3, 2017 by registered mail; she confirmed that she also sent the Amendment to the Tenant by registered mail on May 19, 2017. A copy of the tracking numbers for both packages is provided on the unpublished cover page of this my Decision. Pursuant to section 90 of the *Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was served Notice of the Hearing on May 8, 2017 and notice of the amendment on May 24, 2017. Having found the Tenant was served with Notice of the Hearing I proceeded with the hearing in her absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

S.H. testified that the Tenant moved out of the rental unit on April 25, 2017 such that an Order of Possession was no longer required.

Issues to be Decided

1. Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to monetary relief for unpaid rent and cleaning of the rental unit?
2. Should the Landlord be authorized to retain the security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement between the Tenant and the former owner, J.S. Also introduced in evidence was a letter dated March 29, 2017 wherein the Tenant was informed of the new management of the property. The Landlord also provide a copy of the Form A Transfer filed at the Land Title Office on March 31, 2017 confirming the Landlord named on the Application and the Notice, became the registered owner of the property as of that date. I am satisfied based on this information that the Landlord had authority to issue the Notice and to make the Application before me.

The tenancy agreement confirmed that this tenancy began March 1, 2017. Monthly rent was payable in the amount of \$800.00 and a security deposit in the amount of \$400.00 was paid on February 10, 2017.

S.H. testified that the Tenant failed to pay rent for the month of April 2017. The Landlord issued the Notice indicating the amount of \$800.00 was due as of April 1, 2017 (the "Notice").

Filed in evidence was a copy of the Proof of Service—Notice to End Tenancy which indicated the Notice was posted to the rental unit door on April 7, 2017. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of April 13, 2017.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, April 18, 2017. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. S.H. confirmed that the Tenant failed to apply to dispute the Notice and failed to pay the outstanding rent.

S.H. stated that although the Tenant vacated the rental unit on April 25, 2017, she failed to clean the rental unit or remove her garbage such that the Landlord incurred the cost of \$276.00 for cleaning and garbage removal. Photos submitted by the Landlord, as well as receipts for cleaning and garbage removal confirm the condition of the rental as indicated by S.H.

Analysis

Based on the above, the Landlord's representative's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I find that the Tenant was obligated to pay monthly rent in the amount of \$800.00 as required by the tenancy agreement. She did not pay the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. I therefore find the Landlord is entitled to the **\$800.00** claimed for unpaid rent for April 2017.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in section 37 of the *Act* as follows:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find the Tenant failed to leave the rental unit reasonably clean as required by section 37(2) and I therefore award the Landlord the **\$276.00** claimed for cleaning and garbage removal.

As the Landlord has been successful, I also award the Landlord recovery of the **\$100.00** filing fee for a total award of **\$1,326.00**

Pursuant to section 38, I authorize the Landlord to retain the Tenant's security deposit of \$400.00 in partial satisfaction of the claim and I grant the Landlord a Monetary Order pursuant to section 67 for the balance due of **\$926.00**. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is awarded compensation for unpaid rent and cleaning of the rental unit, may keep the security deposit in partial satisfaction of the claim, and is granted a monetary order for the balance due in the amount of **\$926.00**.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: June 06, 2017

Residential Tenancy Branch