



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (the "Application") under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the tenant's security deposit and pet damage deposit, and to recover the cost of the filing fee.

An agent for the landlord (the "agent") and the tenant attended the teleconference hearing which began on April 28, 2017. After 11 minutes, and by consent of both parties, the matter was adjourned. An Interim Decision was issued dated April 28, 2017 which should be read in conjunction with this decision. On June 8, 2017, the parties reconvened and the hearing continued. Both parties were affirmed and the parties were given the opportunity to provide evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Although the tenant originally claimed that she did not receive the landlord's documentary evidence, when asked a clarification question, the tenant changed her testimony and confirmed she had received the evidence. As a result, I find the tenant to have been sufficiently served with the landlord's documentary evidence. Furthermore, the tenant confirmed that she did not serve any documentary evidence in response to the landlord's Application.

Preliminary and Procedural Matters

At the outset of the hearing, the agent confirmed that the tenant vacated the rental unit on October 17, 2016 since filing the Application. The tenant affirmed that she vacated on October 10, 2016. The agent requested to withdraw their request for an order of possession as the tenant had already given up possession of the rental unit by vacating

the rental unit. As a result, I have not considered the original order of possession request further in this decision.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit and pet damage deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on July 16, 2015 and reverted to a month to month tenancy after July 15, 2016. Regarding the date the tenant vacated the rental unit, the agent testified it was October 17, 2017 and the tenant testified it was October 10, 2017. Monthly rent in the amount \$2,995.00 was due on the first day of each month during the tenancy. The tenant paid a \$1,497.50 security deposit and a \$300.00 pet damage deposit at the start of the tenancy which the landlord continues to hold. The combined deposits total \$1,797.50.

The landlord has claimed \$2,995.00 in unpaid rent. The landlord submitted in evidence a two page tenant account ledger summary on the monetary worksheet describing in detail how the landlord arrived at the amount of \$2,995.00 which dates back to August 2016 with a NSF (non-sufficient funds) check that the tenant confirmed was accurate and that her rent cheque was returned as NSF for August 2016. The tenant claimed, however, that she later paid the rent late in August 2016 which the agent disputed and which is not supported by the monetary order worksheet details representing the tenant's account ledger for rent paid and owing. The account ledger covers the time period from August 2016 to the end of the tenancy in October 2016.

The tenant testified that she "would call her bank to get those details" once she affirmed that she had submitted no documentary evidence from her bank to support her testimony and was unable to provide as specific date when she allegedly paid the August 2016 rent after issuing an NSF cheque to the landlord.

The tenant testified that her "daughter was sick" and the "place was uninhabitable" before the hearing ended.

Analysis

Based on the documentary evidence before me and the testimony of the parties, and on the balance of probabilities, I find the following.

Monetary claim of landlord – The agent testified that the tenant failed to pay \$2,995.00 in rent during the tenancy and supported his testimony by referring to a detailed monetary order worksheet which reflected the tenant's account ledger. The tenant's response I find to be vague and unreliable. Firstly, I find the tenant failed to do her due diligence by failing to provide any documentary evidence to support her testimony. Secondly, given that the tenant was unable to provide a specific date when she alleged to have paid the rent in August 2016 after issuing a non-negotiable cheque to the landlord I find that the tenant is not credible. In reaching this decision, I have also taken into account that at the start of the hearing, the tenant claims she did not receive any documentary evidence and then later confirmed she had received the documentary evidence. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement.

I afford no weight to the tenant's testimony that her daughter was sick and the tenant's allegation that the rental unit was uninhabitable for two reasons. First, even if the tenant's daughter was sick that is not a reason to not pay rent. Second, there was no evidence before me to support that the tenant has ever made an application that the rental unit was uninhabitable and that the tenant had authority under the *Act* to withhold rent under the *Act*.

Based on the above, I find the tenant breached section 26 of the *Act* by failing to pay \$2,995.00 in rent as claimed by the landlord. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$2,995.00** for unpaid rent as claimed.

As the landlord's application had merit, I grant the landlord the recovery of the **\$100.00** filing fee.

Monetary Order – The landlord has established a total monetary claim of **\$3,095.00** comprised of \$2,995.00 in unpaid rent plus the recovery of the \$100.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's combined security deposit and pet damage deposit which total \$1,797.50 and which have accrued no interest to date, which the landlord continues to hold. I authorize the landlord to retain the tenant's full security deposit and pet damage deposit which total \$1,797.50 in partial satisfaction of the landlord's monetary claim.

I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$1,297.50**.

Conclusion

The landlord's application is successful.

The landlord has established a total monetary claim of \$3,095.00 as indicated above. The landlord has been authorized to retain the tenant's full security deposit and pet damage deposit which total \$1,797.50 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order under section 67 for the balance owing by the tenant to the landlord of \$1,297.50. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless 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 9, 2017

Residential Tenancy Branch