



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution 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, and to recover the cost of the filing fee.

The landlord's original application was through the Direct Request Process which resulting in an Interim Decision being issued dated May 4, 2017 adjourning the matter to a participatory hearing. On June 15, 2017, a participatory hearing was held via teleconference. An agent for the landlord (the "agent") attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide her evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing. The Interim Decision dated May 4, 2017 should be read in conjunction with this decision.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The agent testified that the Notice of Hearing, Application and documentary evidence was served on the tenant by registered mail on May 11, 2017 and addressed to the rental unit address where the tenant was residing. A registered mail tracking number was submitted in evidence which has been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website, the registered mail package returned to the sender as "unclaimed". Section 90 of the *Act* indicates that documents served by registered mail are deemed served five days after they are mailed. The agent did not consider the rental unit to be vacant until May 31, 2017. Therefore, I deem the tenant to have been served on May 16, 2017 which is five days after May 11, 2017 when the

registered mail package was mailed. As I am satisfied the tenant was duly served and did not attend the hearing, the hearing continued without the tenant present.

Preliminary and Procedural Matters

At the outset of the hearing, the agent confirmed that as the tenant vacated the rental unit on May 31, 2017, the landlord was no longer seeking an order of possession. As a result, the order of possession was not considered further as part of the landlord's Application.

The agent testified that in addition to the rent owed for April 2017 of \$1,125.00 the landlord is also seeking unpaid rent for May 2017 of \$1,125.00 and for loss of rent for June 1 to 8, 2017 of \$208.33 as the rental unit was re-rented effective June 9, 2017 and the new tenant paid \$916.67 for June 9 to 30, 2017 rent. I find that the landlord's request does not prejudice the tenant as the tenant would know or ought to know that rent is due in accordance with the tenancy agreement. Therefore, I permit the landlord to amend their monetary claim as described above pursuant to section 64(3) of the *Act*.

Further to the above, while the agent claimed that the rent had increased from \$1,125.00 to \$1,166.63 as of May 1, 2017, the agent was advised that the increase was over the 3.7% allowable rent increase for 2017 and as a result, the rent increase was invalid and that the maximum unpaid rent amount the landlord could claim for May rent was \$1,125.00.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on November 15, 2015 and ended on May 31, 2017 when the tenant vacated the rental unit. Monthly rent was \$1,125.00 per month and was due on the first day of each month. The landlord confirmed that the tenant did not pay a security deposit or a pet damage deposit during the tenancy.

The landlord's amended monetary claim is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
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1. Unpaid April 2017 rent	\$1,125.00
2. Unpaid May 2017 rent	\$1,125.00
3. Loss of June 1 to 8, 2017 rent	\$208.33
TOTAL	\$2,458.33

Regarding item 1, the landlord has claimed unpaid rent for April 2017 in the amount of \$1,125.00. The agent testified that the tenant was occupying the rental unit and failed to pay any amount of rent for April 2017.

Regarding item 2, the landlord has claimed \$1,125.00 for unpaid rent for May 2017 in the amount of \$1,125.00 as the tenant did not vacate the rental unit until May 31, 2017.

Regarding item 3, the agent testified that the landlord immediately began to advertise the rental unit once the tenant vacated the rental unit and was successful in securing a new tenant effective June 9, 2017. The agent testified that the new tenant paid \$916.67 for June 9 to 30, 2017 which left the landlord with a June 2017 loss of rent differential in the amount of \$208.33.

Analysis

Based on the undisputed documentary evidence and undisputed testimony of the agent, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, and taking into account that I find the landlord's evidence and the agent's testimony support their full monetary claim, I find the landlord's application is fully successful in the amount of **\$2,458.33**.

In reaching this finding I have considered the tenancy agreement, proof of service documents, testimony and tenant account ledger. In addition, I find that the tenant breached section 26 of the *Act* which requires a tenant to pay rent on the date in which it is due in accordance with the tenancy agreement.

As the landlord's claim is successful, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*. Based on the above, I find the landlord has established a total monetary claim of \$2,558.33 as described above. Therefore, I grant the landlord a monetary order pursuant to section

67 of the *Act*, for the amount owing by the tenant to the landlord in the amount of **\$2,558.33.**

Conclusion

The landlord's application is fully successful.

The landlord has established a total monetary claim of \$2,558.33 as described above. The landlord has been granted a monetary order pursuant to section 67 in that amount. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

his 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 28, 2017

Residential Tenancy Branch