



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNDC, MNSD, FF; CNR

Introduction

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

- an order of possession for unpaid rent and for breach of an agreement with the landlord, pursuant to section 55;
- a monetary order for unpaid rent and for compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the Act for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 5, 2017 ("10 Day Notice"), pursuant to section 46.

The tenant did not attend this hearing, which lasted approximately 22 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on June 26, 2017 by way of registered mail to the rental unit where the tenant was still residing. The landlord provided a Canada Post tracking number verbally during the hearing. The landlord said that the package was delivered and signed for by the tenant's roommate. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlord's application on July 1, 2017, five days after its registered mailing.

At the outset of the hearing, the landlord confirmed that she did not require an order of possession because the tenant had vacated the rental unit on June 30, 2017 and she had taken back possession and re-rented the unit to new tenants. Accordingly, this portion of the landlord's application is dismissed without leave to reapply.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenant, I order the tenant's application dismissed without leave to reapply.

Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for compensation for damage or loss under the Act, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for her application?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on May 15, 2016 and ended on June 30, 2017. Monthly rent in the amount of \$3,200.00 was payable on the first day of each month. A security deposit of \$1,500.00 was paid by the tenant and the landlord continues to retain this deposit in full. Two written tenancy agreements were signed by both parties and copies were provided for this hearing. The first tenancy agreement indicates that the tenancy began on May 15, 2016, for a fixed term of one year after which the tenant was required to vacate the rental unit. The second tenancy agreement indicates that the tenancy began on May 1, 2017 on a month-to-month basis. No move-in or move-out condition inspection reports were completed for this tenancy. No written forwarding address was provided by the tenant to the landlord.

The landlord seeks unpaid rent of \$3,200.00 from the tenant for June 2017, a loss of rent for four days pro-rated at \$400.00 for July 2017, \$200.00 for garbage and cleaning fees and \$100.00 for the application filing fee.

The landlord claimed that the tenant advised her that he did not intend to pay June 2017 rent to her and she served the 10 Day Notice personally to his roommate on June 10, 2017 for the tenant to vacate by the effective date on the notice of June 15, 2017 for failure to pay June rent of \$3,200.00. The landlord stated that the tenant falsely claimed that he was entitled to a rent reduction for June 2017 rent in exchange for doing repairs,

and that when she filed her application on June 26, 2017, the tenant indicated he would be moving by June 30, 2017.

The landlord said that she made best efforts to re-rent the unit as soon as possible after the tenant vacated on June 30, 2017. She provided a copy of an online advertisement that she posted on June 21, 2017, in order to re-rent the unit. The landlord said that she re-rented the unit to new tenants as of July 4, 2017 so she was only seeking pro-rated rent of \$400.00 for four days in July 2017.

The landlord confirmed that she was abandoning her claims for full rent of \$3,200.00 for July 2017 and a carpet cleaning fee of \$200.00.

Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which in this case required the tenant to pay by the first day of each month,. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent totalling \$3,200.00 for June 2017 while he was still residing in the rental unit for the entire month. Therefore, I find that the landlord is entitled to rental arrears of \$3,200.00 for June 2017 from the tenant.

I award the landlord \$309.68 of the \$400.00 sought for a loss of July 2017 rent. I find that although the tenant was required to vacate the rental unit earlier by June 20, 2017, the corrected effective date on the 10 Day Notice, for failure to pay June 2017 rent to the landlord, he left on June 30, 2017. I accept the landlord's undisputed affirmed testimony that she mitigated her losses by advertising the unit as of June 21, 2017 and was able to find new tenants as of July 4, 2017. The landlord claimed that she was entitled to four days of rent for July 2017, pro-rated at \$400.00. If the landlord re-rented it as of July 4, 2017, she would have been paid rent for July 4, 2017. Therefore, I find that she is entitled to three days of rent from July 1 to 3, 2017, inclusive. I have pro-rated the rent as follows: $\$3,200.00 / 31 \text{ days in July 2017} \times 3 \text{ days} = \309.677 (rounded up to \$309.68).

I find that the landlord failed to provide the invoice for \$200.00 for cleaning and garbage removal that she had in her possession during the hearing. Although the landlord filed

this application on June 26, 2017, prior to the tenant moving out on June 30, 2017, the landlord had ample time to submit this invoice at least 14 days prior to the hearing on August 9, 2017 and failed to do so. Therefore, this portion of her application is dismissed without leave to reapply.

The landlord continues to hold the tenant's security deposit \$1,500.00. No interest is payable on the deposit during the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I find that the landlord is entitled to retain the tenant's entire security deposit of \$1,500.00 in partial satisfaction of the monetary award.

As the landlord was partially successful in this application, I find that she is entitled to recover the \$100.00 application filing fee from the tenant.

Conclusion

I order the landlord to retain the tenant's entire security deposit of \$1,500.00 in partial satisfaction of the monetary award.

I issue a monetary Order in the landlord's favour in the amount of \$2,009.68. 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.

The tenant's application is dismissed without leave to reapply.

The landlord's application for an order of possession is dismissed without leave to reapply.

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: August 10, 2017

Residential Tenancy Branch