



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CONCERT REALTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

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*"). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the tenant's security deposit and pet damage deposit, and to recover the cost of the filing fee.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The agent provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on August 2, 2017. A copy of the registered mail tracking number has been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website information, the registered mail package was signed for and accepted on August 3, 2017. Therefore, I find the tenant was served with the Notice of Hearing, Application and documentary evidence as of August 3, 2017, the date the registered mail package was signed for and accepted.

The hearing process was explained to the agent, and the agent was given an opportunity to ask questions about the hearing process. Thereafter the agent gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all 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 and Procedural Matters

As the agent confirmed that the tenant vacated the rental unit on July 31, 2017 since filing their application, the agent confirmed that an order of possession is no longer necessary as the landlord has possession of the rental unit. Therefore, I will not consider the landlord's request for an order of possession at this proceeding.

In addition to the above, the agent testified that in addition to the rent owed for July 2017 of \$1,105, plus \$35.00 for storage as per the included storage locker agreement signed by the tenant, the agent stated that the landlord is seeking loss of August 2017 rent less the \$499.03 the landlord received from new tenants that moved in effective August 18, 2017 as the landlord was able to minimize some of their loss in accordance with section 7 of the *Act*. I find that the tenant would have known or ought to have known that the landlord would suffer loss of a portion of rent for August 2017 based on the tenants' failing to pay rent for July 2017 and have included the loss of \$605.97 in rent which is \$1,105 for August 2017 loss of rent less the \$499.03 deducted from that amount which was received from the new tenants who moved in August 18, 2017. As a result, I find the new total monetary claim of the landlord is \$1,140 as originally claimed comprised of \$1,105.00 for unpaid July 2017 rent, \$35.00 for the unpaid storage locker fee for July 2017, plus \$605.97 for the loss of that portion of August 2017 rent for a total monetary claim of \$1,745.97 pursuant to section 64(3) of the *Act*. I also note that the landlord has already been authorized to retain the tenant's \$552.50 security deposit and \$552.50 pet damage deposit which reduces the total monetary claim to \$640.97 before the filing fee is accounted for.

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 April 1, 2017 and was scheduled to revert to a month to month tenancy after March 31, 2018. The tenant vacated the rental unit July 31, 2017 after being served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 10, 2017 (the "10 Day Notice").

Monthly rent in the amount of \$1,105.00 was due on the first day of each month. The agent affirmed that the tenant paid a \$552.50 security deposit and a \$552.50 pet damage deposit, both of which the tenant surrendered at the end of the tenancy. As a result, the agent stated that the landlord was no longer seeking to offset the deposits as the tenant surrendered both deposits at the end of the tenancy since filing their application. In support of this, the agent referred to the outgoing condition inspection report which reads in part and is initialed by the tenant:

“...balance owing after deposit... resident agrees to surrender deposits to cover July rent”

[Reproduced as written]

Based on the above, I will not consider the security deposit and pet damage deposit further as the landlord has provided unopposed testimony and undisputed documentary evidence that supports that the tenant has already surrendered both deposits. The landlord's reduced monetary claim is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid July 2017 rent	\$1,105.00
2. Unpaid storage locker fee for July 2017	\$35.00
3. Loss of August 2017 portion of rent (as described above)	\$605.97
Subtotal	\$1,745.97
<i>Less tenant's surrender of combined security deposit of \$552.50 and pet damage deposit of \$552.50</i>	<i>-\$1,105.00</i>
TOTAL	\$640.97

The agent testified that the 10 Day Notice was served by posting to the tenant's door on July 10, 2017 and that the tenants failed to pay \$1,140.00 for the combined rent and storage locker fee. The agent confirmed that the tenant did not dispute the 10 Day Notice or pay the amount owing within 5 days of being deemed served on July 13, 2017. The effective vacancy listed on the 10 Day Notice was July 28, 2017. The tenant vacated on July 31, 2017.

The agent testified that he began to advertise for a new tenant on July 31, 2017 and was able to secure a new tenant who moved in August 18, 2017 and paid \$499.03 for

the remainder of August 2017 rent resulting in a rental loss of \$605.97 for August 2017 due to the tenant breaching the *Act*.

Analysis

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

Claim for unpaid rent and loss of rent – As the tenant was served with the Notice of Hearing, Application and documentary evidence, and did not attend the hearing, I find the landlord's application to be unopposed by the tenant. The agent testified that the landlord has suffered a loss of \$605.97 for August 2017 rent and that the tenant has already surrendered both deposits to cover the \$1,105.00 unpaid July 2017 rent amount. I find the landlord has met the burden of proof and has established a monetary claim of **\$1,745.97** as claimed.

As the landlord has succeeded with their application, I grant the landlord the recovery of the filing fee in the amount of **\$100.00**.

I find the landlord is entitled to a monetary order in the amount of **\$740.97** pursuant to sections 67 and 72 of the *Act* as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid July 2017 rent	\$1,105.00
2. Unpaid storage locker fee for July 2017	\$35.00
3. Loss of August 2017 portion of rent (as described above)	\$605.97
Subtotal	\$1,745.97
<i>Less tenant's surrender of combined security deposit of \$552.50 and pet damage deposit of \$552.50</i>	<i>-(1,105.00)</i>
4. Recovery of cost of the filing fee	\$100.00
TOTAL OWING BY THE TENANT TO THE LANDLORD	\$740.97

Conclusion

The landlord's application is fully successful.

The landlord has established a total monetary claim of \$1,745.97 which was offset by \$1,105.00 when the tenant surrendered both deposits on the move-out condition

inspection report prior to the hearing. The landlord is granted a monetary order under sections 67 and 72 of the *Act* for the amount owing by the tenant to the landlord in the amount of \$740.97. 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: October 30, 2017

Residential Tenancy Branch