



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and authorization to retain the security deposit. The landlord appeared at the hearing but the tenant did not despite leaving the teleconference call open for more than 30 minutes.

The landlord testified that he personally served the tenant with the hearing documents at the rental unit within three days of filing. I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

The landlord testified that the tenant has since vacated the rental unit and the landlord confirmed that he has regained possession of the rental unit. Accordingly, an Order of Possession is no longer required and I do not provide one with this decision. The remainder of this decision pertains to the landlord's monetary claims against the tenant.

During the hearing, the landlord requested that the monetary claim be amended to reflect an additional payment made by the tenant after the landlord filed and loss of rent for November 2017 and December 2017 since the tenant was retained possession of the rental unit until early December 2017. The landlord testified that the tenant was last seen at the property on December 2, 2017, the tenant did not notify the landlord when she finished moving out, the tenant did not return the keys to the landlord or respond to his text messages, and the landlord did not enter the rental unit and regain possession until December 4, 2017. The landlord confirmed that the rental unit has not been re-rented for December 2017. Since the tenant benefited from continuing to hold possession of the rental unit through the month of November 2017 and into December 2017 I found the landlord's request to recover loss of rent for these two months to be

reasonably foreseeable under this Application for Dispute Resolution and I permitted the application to be amended.

I noted that the landlord had submitted an Amendment to an Application for Dispute Resolution form to the Residential Tenancy Branch on December 12, 2017. The landlord sought to add loss of rent for December 2017 and cleaning and damage claims by way of the Amendment. The landlord testified that he sent a copy of the Amendment to the tenant via text message sent on December 21, 2017 but the tenant did not respond to the text message. An application may be amended during the hearing where the other party is not unduly prejudiced by the amendment and the amendment is reasonably foreseeable. I have amended the claim to include loss of rent for December 2017 for the reasons provided above; however, I did not permit the application to be amended for the damage and cleaning claims. An Amendment must be served upon the respondent at least 14 days before the scheduled hearing and in a manner that complies with section 89 of the Act. The Amendment was not properly served upon the tenant and I am not satisfied that a damage and cleaning claim would have been anticipated by the tenant under an Application for Dispute Resolution that was originally filed to deal with allegations of unpaid rent. The landlord was informed of his right to file another Application for Dispute Resolution to seek compensation from the tenant for damage and cleaning.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order against the tenant for unpaid and/or loss of rent for months up to and including December 2017?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

I heard that the parties had a written tenancy agreement; however, the landlord is unable to locate his copy of the agreement. The landlord testified that the tenancy started approximately five years ago. The tenant paid a security deposit of \$400.00 and was required to pay rent of \$800.00 on the first day of every month.

On October 1, 2017 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"). The 10 Day Notice indicates the tenant owed rent of \$3,703.00 as of October 1, 2017. The tenant paid the landlord \$800.00 on or about October 2, 2017 but did not file to dispute the 10 Day Notice. The tenant paid the landlord another \$800.00 on October 17, 2017 but nothing thereafter.

According to the landlord, the tenant appeared to be in the process of moving out at the end of November 2017 and the landlord's wife requested the tenant come see the landlord before she left. The tenant was last seen at the property by the landlord on the property's video surveillance on December 2, 2017. The tenant did not return the keys to the landlord or come to see the landlord or otherwise notify the landlord that she had finished moving out. The landlord entered the rental unit on December 4, 2017 and found the rental unit was vacant.

The landlord seeks to recover unpaid and/or loss of rent for months up to and including December 2017. The landlord provided a detailed calculation showing the monthly rent and payments the tenant made that lead to the rental arrears of \$3,703.00; a copy of the 10 Day Notice and a signed Proof of Service for the 10 Day Notice. The detailed calculation demonstrates that the rental arrears of \$3,703.00 includes rent for October 2017.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Based on the undisputed evidence before me, I accept that the tenant was required to pay rent of \$800.00 on the first day of every month and that she failed to do so multiple times, leading to a rental arrears balance of \$3,703.00 for months up to and including October 2017. After taking into account the two payments of \$800.00 made by the tenant after issuance of the 10 Day Notice, I find the landlord entitled to recover unpaid rent of \$2,103.00.

Since the tenant remained in possession of the rental unit for the month of November 2017 and into December 2017, I am satisfied that the tenant's failure to vacate the rental unit or pay for use and occupancy for these months caused the landlord to suffer further loss of rent due to the tenant's actions. Therefore, I further award the landlord loss of rent for the months of November 2017 and December 2017 in the sum of \$1,600.00.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent. I also award the landlord recovery of the \$100.00 paid for this Application.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant in the sum of \$3,403.00, calculated as follows:

Unpaid Rent: as per 10 Day Notice	\$3,703.00
Less: payments made on October 2 and 17, 2017	(1,600.00)
Loss of rent for November and December 2017	1,600.00
Filing fee	100.00
Less: security deposit	<u>(400.00)</u>
Monetary Order for landlord	\$3,403.00

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$3,403.00 to serve and enforce upon the tenant.

The landlord remains at liberty to file another Application for Dispute Resolution to seek compensation from the tenant for damage and cleaning.

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: December 28, 2017

Residential Tenancy Branch