



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") for an order of possession based on an undisputed 10 Day Notice for Unpaid Rent or Utilities ("10 Day Notice"), for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and original documentary evidence were served on the tenant by registered mail on January 5, 2018 and that the mail was addressed to the tenant at the rental unit address. 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 the registered mail package was marked as "unclaimed". Section 90 of the *Act* states that documents served by registered mail are deemed served 5 days after they are mailed. Based on the evidence before me, I find that the tenant was deemed served with the Notice of Hearing, application and documentary evidence as of January 10, 2018 which is five days after it was mailed on January 5, 2018. Therefore, the hearing continued without the tenant present and as such, I consider this application to be unopposed by the tenant.

Preliminary and Procedural Matters

The landlord confirmed their email address and the email address for the tenant at the outset of the hearing. Accordingly, the decision will be emailed to both parties.

At the outset of the hearing, the landlord confirmed that they were withdrawing their request for an order of possession as since filing their application, the landlord has deemed the rental unit abandoned as of February 14, 2018. Therefore, as the landlord has already obtained possession back of the rental unit through abandonment under the *Act*, I will not consider the landlord's request for an order of possession. The hearing proceeded with consideration of the landlord's monetary claim only as a result.

The landlord requested to amend the application to include rent owed up to and including February 2018. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement as described by the landlord. Therefore, pursuant to section 64(3) of the *Act*, I permit the landlord to increase his monetary claim from \$2,505.00 to \$3,340.00 comprised of four months of \$835.00 unpaid or loss of rent which includes the months of November 2017, December 2017, January 2018 and February 2018.

Issues to be Decided

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

Background and Evidence

The landlord testified that an oral tenancy agreement was formed with the tenant and that the start date was approximately February 2016. The landlord testified that the tenancy ended on February 14, 2018 after receiving an email from the tenant indicating that he moved back to Ontario and had abandoned the rental unit. As the landlord failed to create a written tenancy agreement, I will address that later in this decision.

The landlord testified under oath that the monthly rent was \$900.00 per month originally and was later reduced to \$835.00 per month and was due on the first day of each month. The landlord also stated that the tenant paid a security deposit of \$450.00 which

the landlord continues to hold. The landlord stated that if he was so entitled, he would like to offset the money owed by the tenant with the tenant's security deposit.

The landlord is claiming a total of \$3,340.00 for unpaid rent and loss of rent comprised of \$835.00 per month for four months including November 2017, December 2017, January 2018 and February 2018 inclusive. The landlord is also seeking recovery of the cost of the filing fee.

Analysis

Based on the undisputed documentary evidence and undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As I have accepted that 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, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable. I also find the tenant breached section 26 of the *Act* which states in part:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[My emphasis added]

Therefore, I find the tenant owes the landlord **\$3,340.00** as claimed for unpaid rent and loss of rent.

In addition, I find the landlord is entitled to the recovery of the cost of the filing fee of **\$100.00** pursuant to section 72 of the *Act*, as their application was fully successful. Based on the above, I find the landlord has established a total monetary claim of **\$3,440.00** comprised of \$3,340.00 in unpaid rent and loss of rent, plus the \$100.00 recovery of the cost of the filing fee.

As the landlord continues to hold the tenant's \$450.00 security deposit and pursuant to sections 38 and 72 of the *Act*, I authorize the landlord to retain the tenant's full security

deposit of \$450.00 which has accrued \$0.00 in interest, 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 **\$2,900.00.**

I caution the tenant to comply with section 26 of the *Act* in the future.

I also caution the landlord to comply with section 13 of the *Act* in the future which requires that all tenancy agreements since January 1, 2004 be in writing.

Conclusion

The landlord's application is fully successful.

The landlord has been authorized to retain the tenant's full security deposit of \$450.00 including \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$2,990.00. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

Both parties have been cautioned as described above.

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: March 16, 2018

Residential Tenancy Branch