



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MND, 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, damages; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

At the outset of the hearing, the tenant requested an adjournment so that she could make a police statement regarding an assault that took place on the weekend. The landlord objected to adjourning the proceeding and requested the hearing proceed. The police officer could be heard telling the tenant that she could make the statement after she is done with the proceeding. In these circumstances, I denied the tenant's request for adjournment and proceeded with the hearing.

I determined that the tenant has already vacated the rental unit and the landlord no longer requires an Order of Possession. Accordingly, I do not provide one with this decision.

The landlord requested that her monetary claim be amended to include loss of rent for June and July 2018. The parties were in agreement that the tenant was in possession of the rental unit until June 30, 2018 and I found the landlord's request for loss of rent for June 2018 to be reasonably foreseeable. However, the tenant stated she did not anticipate having to respond to a claim for loss of rent for July 2018 at this proceeding. Accordingly, I permitted the landlord to amend her claim to request loss of rent for June

2018 and I informed the parties that the landlord may pursue the tenant for loss of rent for July 2018 under a future Application for Dispute Resolution.

Issue(s) to be Decided

1. Is the landlord entitled to recover unpaid and/or loss of rent for May 2018 and June 2018?
2. Has the landlord established an entitlement to compensation for damage and cleaning, as claimed?
3. Disposition of the security deposit.

Background and Evidence

The tenant moved into the rental unit with another person on November 1, 2017. The landlord collected a security deposit of \$625.00. That other person paid the rent for November 2017 and December 2017 but moved out of the rental unit sometime before January 1, 2018.

Starting January 1, 2018 the tenant paid and the landlord accepted rent from the tenant in the amount of \$1,250.00 payable on the first day of every month. The tenant paid rent up to and including the months of April 2018 and then did not pay any rent for May 2018. On May 2, 2018 that landlord served a 10 Day Notice to End Tenancy for Unpaid Rent with a stated effective date of May 11, 2018. The tenant did not pay the outstanding rent or file to dispute the 10 Day Notice.

The parties provided consistent testimony that the tenant did not pay any rent for June 2018 and vacated the rental unit on June 30, 2018.

The tenant was asked whether she had authorization from the landlord or an Arbitrator to withhold rent; had overpaid rent or a deposit; or, paid for repairs that would meet the definition of emergency repair. The tenant confirmed that none of these circumstances applied. Rather, the tenant presented various other grievances and I informed the tenant that she may pursue the landlord for compensation for breaches of the Act, regulations or tenancy agreement by making her own Application for Dispute Resolution.

As for the landlord's request to retain the security deposit for "damages" in the amount of \$625.00, I found this request premature. When the landlord filed her Application for Dispute Resolution, the tenant was still occupying the rental unit and the landlord had

not suffered losses for cleaning or damage at that point. As of the date of this hearing the landlord stated she has not finished cleaning the rental unit or made repaired damage. Accordingly, I dismissed the landlord's request for compensation for cleaning and damage with leave to reapply.

As for the security deposit, the landlord requested that it remain in trust, to be administered in accordance with the Act once the landlord is provided a forwarding address for the tenant. The tenant acknowledged that she had not yet provided the landlord with a forwarding address.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent under the Act. The definition of "tenancy agreement" under section 1 of the Act includes oral agreements and implied agreements, such as in this case. I accepted the unopposed submissions of both parties that an oral or implied agreement formed between the parties, requiring the tenant to pay rent of \$1,250.00 on the first day of every month.

The Act provides very specific and limited circumstances when a tenant may legally withhold rent that is payable. Those reasons pertain to overpaid rent or a deposit; an emergency repair made by the tenant in accordance with section 33 of the Act; or upon receiving authorization from the landlord or an Arbitrator. The tenant did not present a legal basis for withholding the rent.

In light of the above, I find the tenant was obligated to pay \$1,250.00 on May 1, 2018 and she did not. Therefore, I award the landlord unpaid rent for May 2018.

Considering the tenant remained in possession of the rental unit well past the effective date of the 10 Day Notice, I find the tenant breached the Act and her actions caused the landlord to suffer further loss of rent for June 2018. Therefore, I award the landlord recovery of loss of rent for June 2018.

I further award the landlord recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution.

In keeping with my findings and awards above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent – May 2018	\$1,250.00
Loss of rent – June 2018	1,250.00
Filing fee	<u>100.00</u>
Monetary Order for landlord	\$2,600.00

The landlord's request to recover loss of rent for July 2018 and other damages or losses are dismissed with leave to reapply.

The security deposit remains in trust, to be administered in accordance with section 38 of the Act.

Conclusion

The landlord is provided a Monetary Order in the sum of \$2,600.00 for unpaid and loss of rent for May 2018 and June 2018; and, recovery of the filing fee.

The security deposit remains in trust at this time, to be administered in accordance with section 38 of the Act.

The landlord is at liberty to file another Application for Dispute Resolution to claim other damages or loss against the tenant if she so chooses. The tenant is at liberty to file her own Application for Dispute Resolution for monetary compensation if she so chooses.

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: July 10, 2018

Residential Tenancy Branch