



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR MNR MNSD FF
Tenant: CNR LRE FF

Introduction

This hearing was convened as a result of a cross Application for Dispute Resolution. The participatory hearing was held, via teleconference, on April 4, 2019. Each party applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties acknowledged receipt of each other’s application and evidence and neither party took issue with the service of these documents during the hearing.

I have reviewed all oral and written 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 Matters

During the hearing, the Tenant testified that he has already vacated the rental unit. Given this, I find all of the issues on the Tenant’s application are moot, and are dismissed without leave.

With respect to the Landlord’s application, given she has regained possession of the rental unit, her application for an order of possession is no longer required. I dismiss this portion of his application, without leave, and the only remaining ground on her

application is her request to be compensated for unpaid rent, and to claim against the security deposit for this rent owed.

Issue(s) to be Decided

Landlord:

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested?

Background and Evidence

During the hearing, both parties agreed on the following:

- Monthly rent was \$1,010.00 per month, and was due on the first of the month.
- The Landlord holds a security deposit in the amount of \$475.00
- The Tenant vacated the rental unit on February 28, 2019

The Landlord is looking to recover rent for February and March of 2019. The Landlord confirmed that she received a cheque for \$535.00 for February 2019 rent, and that \$475.00 was still owed by the Tenant. The Tenant confirmed that he only paid this amount because he made his own deduction from rent for the security deposit the Landlord held, although it was clear this was not done with the consent of both parties.

The Landlord stated that she received written notice, on February 6, 2019, from the Tenant that he was going to vacate the rental unit at the end of February 2019. The Tenant stated that he left this notice for the Landlord in his own mailbox at the end of January 2019, as this is how he normally pays his rent (the Landlord will come to pick up rent from his mailbox). The Tenant did not take any other steps to ensure the Landlord was served this notice. The Landlord stated that when she got the notice from the Tenant, she did not repost the ad, and relied on word of mouth to re-rent the unit. The Landlord stated that she found someone on February 7 or 8, 2019, and these Tenants moved in on April 1, 2019. The Landlord stated that she wants to recover rent for March 2019 because the Tenant did not give a full 1 month notice.

The Tenant feels the Landlord could have re-rented the unit much sooner, had she tried harder, and he feels he presented several options to her which could have resulted in the unit being rented as of March 1, 2019.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

With respect to rent for the month of February 2019, I note the Tenant only paid \$535.00, and arbitrarily applied his security deposit (held by the Landlord) to the remaining \$475.00 which he owed for that month. However, the Tenant was not lawfully entitled to do this, and he still owed \$475.00 for February and the Landlord still held the \$475.00 security deposit at that time. As such, I find the Tenant is required to pay for the unpaid portion of February 2019 rent, in the amount of \$475.00. The security deposit held by the Landlord will be addressed further below.

With respect to rent for March 2019, I turn to section 45 of the Act:

Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I note that when giving written notice to end a tenancy, the onus is on the person giving the notice to serve and deliver this notice to the other party. The Tenant did not take proper steps to ensure this notice was served in a timely manner, as he simply left it for the Landlord to find in his mailbox, when she picked up rent. In any event, the Landlord did not receive the notice from the Tenant until February 6, 2019, which is the day I find the Tenant's notice was sufficiently served for the purposes of this Act.

Given the Tenant did not utilize a verifiable or trackable method of service for his notice, and given the Landlord did not receive this notice until February 6, 2019, I find the Tenant breached section 45 of the Act by failing to give at least one month written notice to the Landlord. As such, I find the Landlord is entitled to some compensation for the Tenant's breach of the Act and for her loss of rent for March. However, I have also considered that the Landlord did not repost the rental unit at all, and almost immediately (on February 7 or 8th, 2019) entered into a new tenancy agreement to re-rent the unit as of April 1, 2019. I acknowledge the Landlord thought she might need some time to gain access, clean up, and prepare for the next tenancy. However, I am not satisfied she sufficiently mitigated her loss for the month of March. I find the Landlord should have taken further steps and measures to gain access, and re-rent the unit as soon as of March 1, 2019, or explored options to rent it to someone sooner than April 1, 2019.

In the absence of sufficient evidence to show the Landlord properly mitigated her loss, I find the Landlord is not entitled to the full amount of her claim for March rent. However, given the Tenant did breach section 45 of the Act, I find a nominal amount is more reasonable in the situation. In summary, I find the Landlord is entitled to a nominal award of \$150.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with her application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

Item	Amount
February 2019 rent still owed	\$475.00
Nominal Award for breach of Act	\$150.00
Filing Fee	\$100.00
LESS: Security Deposit	\$475.00
Total Amount	\$250.00

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$250.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: April 5, 2019

Residential Tenancy Branch