



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR-S, FF, CNR, MNDC, OLC, PSF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend. The stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on December 20, 2019. The landlord submitted in support of this claim copies of the Canada Post Customer Receipt and Tracking label as confirmation. The Canada Post Tracking label is noted on the cover of this decision. The landlord stated

during the hearing that the notice of hearing package was returned to the landlord by Canada Post as it was “unclaimed” after a notice card and a Final notice card were left for the recipient. The landlord also stated that the tenant had vacated the rental unit on February 5, 2020 and as such an order of possession was no longer required.

I accept the undisputed affirmed evidence of the landlord and find although the tenant failed to claim the package, the tenant is deemed sufficiently served as per section 90 of the Act.

After waiting 64 minutes past the start of this scheduled hearing, the hearing concluded and the tenant's application was dismissed. The landlord confirmed that he did receive the tenant's notice of hearing package and was aware of the tenant's listed issues and was ready to address them. As such, the tenant's application was dismissed without leave to reapply.

Extensive discussions with the landlord regarding the original monetary claim of \$24,236.87; the amended monetary claim for \$19,000.00 and the original details for unpaid rent of \$3,000.00 resulted in a clarification/amendment by the landlord. The landlord shall proceed only on the request for unpaid rent of \$3,000.00 (4 months at \$750.00/month) although the landlord noted that the tenant did not vacate the rental unit until February 5, 2020 and suffered a further loss of rent for the remaining 3 months (December 2019 to February 5, 2020) of \$2,250.00.

The landlord also filed an amendment changing the name of the tenant to include an alias. The landlord provided undisputed affirmed testimony that the tenant was served with this amendment via Canada Post Registered Mail on December 20, 2019. The tenant is deemed served with this package as per section 90 of the Act. As such, the landlord's application shall be amended to reflect this amendment.

During the hearing the landlord noted that his request to retain the \$325.00 security deposit was made in error as the tenant had only paid \$200.00 as per the submitted copy of the receipt issued May 10, 2019.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

The landlord stated that there is no signed tenancy agreement, but a verbal agreement was made beginning May 9, 2019 on a month-to-month basis in which the monthly rent was \$750.00 payable on the 1st day of each month. A security deposit of \$200.00 was paid on May 10, 2019 as per the landlord's submitted copy of a receipt issued.

The landlord seeks a monetary claim of \$3,100.00 which consists of:

\$3,000.00	Unpaid Rent, 4 months at \$750.00 (August 2019 to November 2019)
\$100.00	Filing Fee

The landlord claims that the tenant was served with a 10 Day Notice for Unpaid Rent dated August 30, 2019 with an effective end of tenancy date of September 9, 2019. It states in part that the tenant failed to pay rent of \$750.00 that was due on August 25, 2019. The landlord claims that no rent was paid as of the date of this hearing and has suffered a further loss of rent of \$2,250.00 for the last 3 months (December 2019 to February 5, 2020).

The landlord further claims that a second 10 Day Notice for Unpaid Rent dated December 5, 2019 with an effective end of tenancy date of December 16, 2019. It states in part that the tenant failed to pay rent of \$750.00 that was due on August 1, 2019.

The landlord submitted in support of this claim copies of:

Hand written receipt dated May 9, 2019 for \$700.00 re: May Rent
Hand written receipt dated May 19, 2019 for \$200.00 re: Damage Deposit
Hand written receipt dated May 25, 2019 for \$700.00 re: June Rent, owes \$50.00
Hand written receipt dated June 26, 2019 for \$750.00 re: Rent July 2019
Hand written receipt dated August 1, 2019 for \$750.00 re: Rent Aug 1 2019

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the landlord has provided undisputed affirmed testimony that the tenant failed to pay rent totaling \$3,000.00 for 4 months (August 2019 to November 2019) and then continued to not pay any rent for the remaining 3 months (December 2019 to February 5, 2020) when he vacated the rental unit.

The landlord submitted in support of this claim copies of two 10 Day Notices dated August 30, 2019 (for unpaid rent of \$750.00 due on August 1, 2019) and December 5, 2019 (for unpaid rent of \$750.00 due on August 25, 2019).

A further review of the evidence submitted by the landlord shows a receipt for \$750.00 for "Rent Aug 1 2019" dated August 1, 2019.

I find based upon this conflicting and contradictory documentary evidence provided by the landlord that the landlord's monetary claim for unpaid rent is dismissed. The landlord relied primarily upon his affirmed direct testimony in conjunction with the two 10 Day Notice(s). This is directly in conflict with the landlord's submitted copy of a receipt dated August 1, 2019 for rent paid of \$750.00 for "Rent Aug 1 2019". I find that the receipt issued dated August 1, 2019 contradicts the landlord's claims that August 2019 rent was unpaid. In the absence of any other supporting evidence from the landlord, I find that the landlord has failed to meet his burden of proof for his claim. The landlord's monetary claim is dismissed.

The landlord having been unsuccessful is ordered to return the outstanding \$200.00 security deposit to the tenant forthwith.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant is granted a monetary order of \$200.00 for return of the security deposit.

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: February 21, 2020

Residential Tenancy Branch