



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNDCL, FFL

Introduction

This hearing was scheduled to convene at 11:00 a.m. on February 28, 2022 by way of conference call concerning an amended application made by the landlord seeking an Order of Possession due to a mutual agreement to end the tenancy; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord attended the hearing and gave affirmed testimony. However, the line remained open while the telephone system was monitored for in excess of 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the Notice of Dispute Resolution and other required documents by registered mail and has provided a Registered Domestic Customer Receipt as well as a Canada Post cash register receipt bearing that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence of the landlord has been reviewed and is considered in this Decision.

At the commencement of the hearing, the landlord's agent testified that the tenant vacated the rental unit on February 15, 2022 and I dismiss the landlord's application for an Order of Possession.

Issues to be Decided

The issue remaining to be decided is:

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for unpaid rent, rent for use and occupancy, and recovery of move-out compensation?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on July 1, 2011. Rent in the amount of \$614.00 was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$307.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex.

The landlord's agent further testified that the parties entered into a Mutual Agreement to End Tenancy, a copy of which has been provided for this hearing, effective September 30, 2021. However, the tenant did not pay any rent for the month of September, 2021, leaving \$614.00 outstanding, and did not vacate the rental unit until February 15, 2022 without paying any rent for October, 2021 through February, 2022. The landlord claims \$614.00 for each of the months of September, 2021 through January, 2022 as well as half a months' rent for February, 2022 for a total of \$3,377.00.

In consideration of the Mutual Agreement to End Tenancy, the landlord provided the tenant with compensation in the amount of \$1,250.00, and a copy of the cheque payable to the tenant in that amount has also been provided for this hearing. Since the tenant breached the Mutual Agreement to End Tenancy by not vacating on or before September 30, 2021 the landlord seeks to recover the compensation.

The landlord claims the unpaid rent and overholding as well as recovery of the compensation given to the tenant, for a total of \$4,648.93.

The tenant has not provided a forwarding address to the landlord and has not served the landlord with an Application for Dispute Resolution claiming recovery of the security deposit.

Analysis

I have reviewed all of the landlord's evidentiary material, and I accept the undisputed testimony of the landlord's agent that the tenant did not pay any rent for the months of September, 2021 to February, 2022, and moved out of the rental unit on February 15, 2022. However, the outstanding rent for 5 months, being September, 2021 through

January, 2022 is \$3,070.00 and half of the rent claimed for February, 2022 is an additional \$307.00, for a total of \$3,377.00.

I also accept the undisputed testimony of the landlord's agent that the tenant was given compensation by the landlord in the amount of \$1,250.00 in consideration of the Mutual Agreement to End Tenancy, which was effective September 30, 2021. Since the tenant breached that agreement, I find that the landlord has established a claim for recovery of that compensation.

I make no orders with respect to the security deposit.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,727.00.

This order is final and binding and may be enforced.

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 28, 2022

Residential Tenancy Branch