



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord's agent, MN ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The landlord testified that she had authority to represent her mother, the landlord named in this application, as an agent at this hearing.

The landlord testified that the tenant was served with the landlord's original application for dispute resolution hearing package on May 28, 2015 and the landlord's amended application for dispute resolution hearing package on June 29, 2015, both by way of registered mail. The landlord provided Canada Post receipts and tracking numbers to confirm service. The tenant confirmed receipt of only one page of the landlord's amended application and the full written evidence package. During the hearing, I confirmed the landlord's claims for relief and read aloud the "details of the dispute" in the landlord's application, to the tenant. The tenant testified that he was prepared to proceed with the hearing on the basis of the landlord's full amended application and written evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's written evidence package and sufficiently served for the purposes of section 71(2)(c) of the *Act* with the landlord's entire amended application. Given the tenant's consent, I proceeded with the hearing on the basis of the landlord's entire amended application including the written evidence package.

The tenant testified that he served the landlord with his written evidence package by way of regular mail on June 29, 2015. The landlord testified that she did not receive the tenant's written evidence package. However, the landlord testified that she already had all of the documents from the written evidence package, with the exception of emails between the tenant and the heating restoration company. During the hearing, I read aloud the contents of all the emails to the landlord. The landlord testified that she was prepared to proceed with the hearing on the basis of me considering the tenant's entire written evidence package, including the emails, in this hearing and in my decision. I find that the landlord was sufficiently served for the purposes of section 71(2)(c) of the *Act* with the tenant's entire written evidence package. Given the landlord's consent, I proceeded with the hearing on the basis of the tenant's entire written evidence package, despite the fact that it was served late as per Rule 3.15 of the Residential Tenancy Branch *Rules of Procedure*.

At the outset of the hearing, the landlord confirmed that she wished to withdraw her application for an order of possession for unpaid rent, as the tenant had already vacated the rental unit. Accordingly, this portion of the landlord's application is withdrawn.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent or money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for her application from the tenant?

Background and Evidence

The landlord testified that this tenancy began on October 1, 2014, as per the tenancy agreement, and was for a fixed term to end on April 30, 2015. Both parties agreed that the tenant began occupying the rental unit on September 28, 2014, and vacated the rental unit on May 6, 2015. Monthly rent in the amount of \$875.00 was payable on the first day of each month. A security deposit of \$437.50 was paid by the tenant and the landlord continues to retain this deposit. The landlord provided a copy of the tenancy agreement for this hearing. Both parties agreed that a move-in condition inspection report was completed but a move-out condition inspection report was not completed. The landlord confirmed that she received the tenant's written forwarding address on May 1, 2015, by way of letter, dated April 24, 2015. Both parties provided a copy of this letter for this hearing. The landlord filed her application to retain the tenant's security deposit on May 17, 2015, within 11 days of the end of the tenancy on May 6, 2015.

The landlord seeks a loss of rent of \$875.00 for May 2015 and recovery of the \$50.00 filing fee for her application. The landlord stated that the tenant did not give one month's notice to vacate

the rental unit, as required by the *Act* and by the “rules and regulation agreement” accompanying the tenancy agreement. The landlord provided a copy of this agreement with her application. The landlord indicated that written notice was received from the tenant on May 1, 2015, indicating that the tenant would be vacating the rental unit. The landlord confirmed that she received another letter, dated May 6, 2015, around May 11, 2015, from the tenant, stating that the tenant had already vacated the rental unit. The landlord stated that she posted online advertisements and had showings of the rental unit in an attempt to re-rent the unit but that she was unable to do so for May 2015.

The tenant stated that as per the tenancy agreement, it was within the landlord’s discretion to offer a new fixed term lease after the expiry of the lease on April 30, 2015 and that the landlord refused to offer a new lease. The tenant stated that after unsuccessful attempts and discussions with the landlord, he vacated the rental unit as soon as possible on May 6, 2015. The tenant stated that he is not responsible for the entire loss of May 2015 rent, because he only occupied the rental unit from May 1 to 6, 2015. The tenant stated that he is entitled to the return of his security deposit of \$437.50 as well as reimbursement for heating costs totalling \$598.35 from September 2014 to March 2015, from the landlord. The landlord provided a copy of a heating bill, dated June 10, 2015, from the City for \$114.46. The landlord confirmed that she is required to pay this amount to the City for heating costs for the rental unit.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues with respect to this entire tenancy:

1. Both parties agreed that the landlord will retain the tenant’s entire security deposit of \$437.50;
2. Both parties agreed that the tenant will pay \$114.46 to the landlord by way of a cheque to be sent out by regular mail by no later than July 10, 2015;
3. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlord’s entire application at this hearing, including for recovery of the filing fee, and any issues arising out of this tenancy;
4. Both parties agreed that this settlement agreement constitutes a final and binding resolution of any potential claims that the tenant may have against the landlord regarding any issues arising out of this tenancy;
5. Both parties agreed that they will not initiate any further claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise a full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties gave verbal sworn affirmations at the hearing that they understood and agreed to the above settlement terms, free of any duress or coercion. Both parties confirmed that they understood the above terms to be legal, final, binding and enforceable, settling all aspects of this dispute and arising out of this tenancy.

Conclusion

To give effect to the settlement reached between the parties, I order the landlord to retain the tenant's entire security deposit of \$437.50.

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I issue a monetary Order in the landlord's favour in the amount of \$114.46. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant fails to abide by condition #2 of the above monetary agreement. The landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order in the event that the tenant fails to abide by condition #2 of the above monetary agreement. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application for an order of possession for unpaid rent is withdrawn.

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 06, 2015

Residential Tenancy Branch

