



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAI GODDARD & SMITH PROPERTY MANAGEMENT DIVISION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF; MNSD

Introduction

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

- 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; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application against both landlords, pursuant to the *Act* for:

- authorization to obtain a return of the security deposit, pursuant to section 38.

The landlord, SM ("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 confirmed that she is the property manager for the landlord company, NGSPMD ("landlord company") named in both applications and that she had authority to represent the landlord company as an agent at this hearing.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The landlord withdrew the landlord company's application for \$250.00 for cleaning, indicating that she did not have a receipt for this amount and she did not wish to pursue this claim. Accordingly, this portion of the landlord company's application is withdrawn.

The landlord consented to the tenant's request to amend his Application to include the full legal name of the landlord company. I also amended the landlord's company's application with respect to the spelling of the landlord company name and the spelling of the rental unit address. In accordance with section 64(3)(c) of the *Act*, I amend both parties' applications in these regards, as I see no prejudice to either party in doing so.

The tenant applied for the return of his security deposit but also included a request for \$50.00 paid for a garage door opener. The tenant indicated this amount and a description in his application. The landlord confirmed that she was aware of the tenant's application, including the above relief sought. In accordance with section 64(3)(c) of the *Act*, I amend the tenant's application to add a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, as the landlords had notice of the tenant's claim and I see no prejudice to either party in doing so.

Issues to be Decided

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

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

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

Is the tenant entitled to a monetary award for the return of the security deposit?

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

Background and Evidence

The tenant stated that his month-to-month tenancy began on March 15, 2009, when he first began occupying the rental unit. The landlord stated that the tenancy with the new landlord company named in both applications, began on November 2, 2011, when the landlord assumed this existing tenancy from the previous landlord. The tenant stated that he vacated the rental unit on November 26, 2014. Both parties agreed that rent of \$550.00 was payable on the first day of each month. Both parties agreed that a security deposit of \$275.00 was paid by the tenant and the landlord company continues to retain this deposit.

Both parties agreed that a move-in condition inspection and report were completed but that a move-out condition inspection report was not completed. The tenant stated that he sent a written forwarding address to the landlords by way of regular mail on December 18, 2014 and

by way of registered mail on December 24, 2014. The landlord stated that the landlord company received a forwarding address in writing from the tenant only on December 30, 2014. The landlord provided a letter, dated March 3, 2014, from the landlord company's receptionist to confirm the date when this mail was received.

The landlord company seeks unpaid rent of \$550.00 for each month of September, October and November 2014, totaling \$1,650.00. The landlord stated that these amounts are unpaid. The landlord provided a timeline from August 8 to October 29, 2014, indicating the communications between the parties and the landlord company's efforts to obtain unpaid rent from the tenant. The landlord company also provided letters to the tenant, dated September 16, 2014 and November 7, 2014, indicating that the tenant's rent was late and requesting rent be paid. The landlord company also provided a rent ledger, showing that rent was unpaid by the tenant from September to November 2014, in the amount of \$1,650.00.

The landlord company provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities, dated November 4, 2014 ("10 Day Notice"), indicating that rent of \$1,650.00 was unpaid by the tenant and was due on November 1, 2014. The tenant confirmed receipt of this 10 Day Notice on November 4, 2014 and stated that he disputed it. Both parties agreed that a previous hearing was held on December 11, 2014, by a different Arbitrator, where a decision was issued of the same date. The landlord company provided a copy of the decision, which dismissed the tenant's application for more time to make an application to cancel the 10 Day Notice and to cancel the notice because the tenant had already moved out of the rental unit and he no longer required that relief. The file number for that hearing appears on the front page of this decision.

The tenant stated that he paid rent for September, October and November 2014, totaling \$1,650.00. The tenant stated that he did not provide copies of his bank records for this hearing, indicating that rent was paid for these months. The tenant indicated that he mailed a personal cheque for September and November 2014, to the landlords by regular mail to the old address provided on the landlord company's letterhead in their letter to the tenant. This letter from the landlord company advised the tenant that the new landlord company had assumed control of the rental unit and that rent effective from October 1, 2014 onwards was to be provided to a new address. The landlord company provided a copy of this letter. The landlord stated that the landlord company did not receive any rent, whether by mail or otherwise, from the tenant from September to November 2014, inclusive.

The tenant stated that he sent a money order by regular mail to the landlord company's old address for October 2014 rent. The landlord company provided a letter, dated October 30, 2014, indicating that two of the landlord company's agents went to collect the rent from the tenant and that they received a photocopy of a money order for October 2014 rent because the tenant stated that he had already mailed the actual money order to the landlord. The tenant agreed with this information. The landlord company provided photocopies of the money order and the November 2014 rent cheque that it received from the tenant. The landlord stated that

the tenant was aware that he was not permitted to send rent to the old landlord company address but that he continued to do so, after being advised not to do so.

Analysis

The tenant seeks \$50.00 from the landlords for a garage door opener that he was required to place a deposit for, at the beginning of his tenancy. The landlord agreed that the tenant is entitled to this amount. Accordingly, I find that the tenant is entitled to \$50.00 for the garage door opener.

Section 26 of the *Act* requires that rent be paid on the date indicated in the tenancy agreement, which in this case, is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Section 67 of the *Act* establishes that if loss results from a tenancy, an Arbitrator may determine the amount of that loss and order that party to pay compensation to the other party. In order to claim for loss under the *Act*, the party claiming the loss bears the burden of proof. The claimant must prove the existence of the 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 and show efforts to minimize this loss. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant did not pay rent as per the tenancy agreement, causing a rental loss.

I find that the landlord company is entitled to \$1,650.00 total in unpaid rent from the tenant for September, October and November 2014. I find that the landlord is entitled to the entire month of rent for November 2014, despite the tenant vacating on November 26, 2014, because rent is due on the first of each month until the end of the month.

I find that the landlord company provided sufficient documentary evidence to indicate that rent was unpaid by the tenant. The landlord company provided copies of letters, a rent ledger, a 10 Day Notice and a timeline to indicate that rent was unpaid and the landlord company was seeking rent for the above months. I accept the landlord's sworn testimony that rent was unpaid and she did not receive the tenant's mailed rent payments, which were sent to an old landlord company address. I find that the tenant did not provide any bank records to indicate that he paid rent for these months. While the burden of proof is on the landlord company to show that rent is unpaid, I find that the tenant could have easily supported his testimony that he paid rent by providing these bank records. I also find that the landlord company is only able to provide certain evidence indicating unpaid rent, as the landlord company cannot provide bank records showing unpaid rent when no rent has been paid. This is different than showing evidence of

dishonoured cheques, which is not the case in this matter. The tenant did not provide evidence that he mailed these rent payments, as he indicated that he sent them by regular mail.

The landlord company continues to hold the tenant's security deposit of \$275.00. The tenant seeks the return of his security deposit of \$275.00. I find that the tenant is not entitled to double the amount of his deposit because the landlord company filed its application to retain the deposit on January 14, 2015 and provided proof of the payment receipt for its application. Therefore, I find that the landlord company filed its application within 15 days of the tenant providing a forwarding address in writing on December 30, 2014. The tenant was unable to provide proof of service for his forwarding address by regular mail on December 18, 2014, and the landlord company provided proof that the tenant's address was received by registered mail on December 30, 2014.

The landlord company seeks to offset the security deposit amount from the monetary award sought for unpaid rent. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord company to retain the tenant's security deposit of \$275.00 in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord company was successful in this Application, I find that the landlord company is entitled to recover the \$50.00 filing fee paid for the Application.

Conclusion

Although the tenant is entitled to the return of his security deposit of \$275.00 and the garage door opener compensation of \$50.00, these amounts have been offset against the landlord company's monetary award below.

I issue a monetary order in the landlord company's favour in the amount of \$1,375.00 against the tenant as follows:

| Item | Amount |
|---|-------------------|
| Unpaid September 2014 Rent | \$550.00 |
| Unpaid October 2014 Rent | 550.00 |
| Loss of November 2014 Rent | 550.00 |
| Less Security Deposit | -275.00 |
| Garage Door Opener Compensation to Tenant | -50.00 |
| Recovery of Filing Fee for Landlord Company's Application | 50.00 |
| Total Monetary Award | \$1,375.00 |

The landlord company is provided with a monetary order in the amount of \$1,375.00 in the above terms and the tenant must be served with this Order as soon as possible. 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 company's application for \$250.00 in cleaning expenses 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: August 17, 2015

Residential Tenancy Branch