



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to retain all or part of the tenant's security deposit, and to recover the cost of the filing fee.

The landlord and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing. A maintenance person for the landlord attended the hearing as a witness but was not called to testify.

The tenant confirmed that he received and reviewed the landlord's documentary evidence prior to the hearing. The tenant confirmed that he attempted to serve the landlord with his documentary evidence but that the landlord did not accept his evidence. The landlord confirmed that she refused to accept the tenant's documentary evidence. Accordingly, I find the landlord was sufficiently served in accordance with the *Act* as the landlord deliberately refused to accept personal service from the tenant.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A month to month tenancy began on July 18, 2015. Monthly rent of \$800.00 was due on the first day of each month. The tenant paid a security deposit of \$400.00 at the start of the tenancy which the landlord continues to hold.

The landlord's monetary claim is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
Item 1. Unpaid August 2016 rent	\$800.00
Item 2. Loss of September 2016 rent	\$800.00
TOTAL	\$1,600.00

Regarding item 1, the tenant testified that he served a written one month notice to end the tenancy (the "notice") on July 20, 2016 and the landlord confirmed that she ripped up the notice to the tenant on the same day. The effective date on the tenant's notice is listed as August 20, 2016.

Regarding item 2, the landlord is seeking loss of September 2016 rent even though the tenant vacated the rental unit on August 12, 2016.

There is no dispute that the tenant did not pay rent for August 2016 before vacating on August 12, 2016.

Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did what was reasonable to minimize the damage or loss.

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 tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1 – In the matter before me, the tenant served a written one month notice to end tenancy on July 20, 2016. The fact that the landlord ripped up the notice and returned it to the tenant does not change the fact that a written notice was served on the landlord. Furthermore, I **caution** the landlord that she should not rip up a written notice to end tenancy from a tenant as that is a legal way to end a month to month tenancy and does not make the notice invalid by ripping up the notice. Section 45 of the *Act* allows a tenant to end a month to month tenancy as follows:

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.

In the matter before me, the tenant's notice dated July 20, 2016 indicates that the tenant will be vacating the rental unit effective August 20, 2016. I find that the tenant's notice would be effective on August 31, 2016 at 1:00 p.m. as monthly rent is due on the first of each month. Therefore, based on the above, I find the landlord has met the burden of proof as the tenant failed to pay rent for August 2016 and is owed **\$800.00** by the tenant.

Item 2 – I find that the landlord is not entitled to loss of September 2016 rent as the tenant's notice was considered served on July 20, 2016 and was effective August 31, 2016 and that the tenancy legally ended on August 31, 2016 as a result. Therefore, I **dismiss** this portion of the landlord's application **without leave to reapply** due to insufficient evidence as the landlord failed to meet the first part of the test for damages or loss for this portion of their claim.

As the landlord's application was only partially successful, I grant the landlord the recovery of half of the \$100.00 cost of the filing fee in the amount of **\$50.00**.

Monetary Order - I find that the landlord has established a total monetary claim of **\$850.00** comprised of \$800.00 for item 1, plus \$50.00 of the cost of the filing fee. Pursuant to section 67 and 72, **I authorize** the landlord to retain the tenant's full security deposit of \$400.00 which has accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$450.00**.

Conclusion

The landlord's claim is partially successful.

The landlord has established a total monetary claim of \$850.00 as described above. The landlord has been authorized to retain the tenant's full security deposit of \$400.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$450.00. The monetary order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 21, 2016

Residential Tenancy Branch