



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent and recovery of the filing fee, and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by legal counsel for the Landlord, and the property manager, who will be referred to collectively as the “Agents” in this decision. The Tenant did not attend. Both of the Agents provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Agents testified in the hearing that the Application, the Notice of Hearing, and the evidence package were sent to the Tenant on September 6, 2017, by registered mail. As a result, I find that the Tenant was deemed served on September 11, 2017, five days after the registered mail was sent.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

At the outset of the hearing the Agents testified that they had received an Order of Possession as the result of a previous hearing regarding the Tenant's Application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent of Utilities (the "10 day Notice"). The Agents testified that as a result, the Tenant had vacated the rental unit on September 8, 2017, and an Order of Possession was no longer required. I confirmed that the Agents wished to withdraw the Application for an Order of Possession and the Application was amended accordingly.

In the hearing the Agents testified that the Tenant continued to occupy the rental unit until September 8, 2017, and requested to amend the Application to include loss of rent for September 4 – October 3, 2017. The Rules of Procedure state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. As a result, the Application was amended to include the additional outstanding rent.

Further to this, the Agents testified that they are seeking to retain the security deposit paid by the Tenant to offset any Monetary Orders issued in the favor of the Landlord. Section 72 of the *Act* states that if the director orders a Tenant to pay any amount to a Landlord, the amount may be deducted from any security deposit or pet damage deposit held by the Landlord on behalf of the Tenant. Pursuant to section 72 of the *Act*, the Application was amended.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation for unpaid rent, to retain the security deposit and recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

In the hearing the Agents testified that beginning September 4, 2016, the Tenant rented the above named rental unit on a month to month basis. The Agents testified that the rental period ran from the fourth day of each month to the third day of the following month, at a monthly rent of \$800.00, which was payable on the fourth day of each month. The Agents also testified that a security deposit in the amount of \$200.00 was paid by the Tenant, which the Landlord still holds. The Agents testified that the Tenant failed to pay rent on time and in full, and that on June 19, 2017, a 10 day Notice was issued in the amount of \$2,750.00 for back owed rent, with an effective vacancy date of July 3, 2017.

The Agents testified that the Tenant continued to reside in the rental unit until September 8, 2017, and that since the service of the 10 Day Notice; the Tenant has not made any payments towards rent. The Agents testified that as of August 4, 2017, the Tenant owed \$4,350.00 in rent for the period up to and including September 3, 2017. The Agents submitted into the

documentary evidence before me, a monetary order worksheet and a detailed ledger showing the above noted outstanding rent amounts.

The Agents testified that on September 4, 2017, the Tenant still resided in the rental unit and as a result, rent in the amount of \$800.00 was due. The Agents testified that the Tenant did not pay the rent as required on September 4, 2017, and vacated the rental unit on September 8, 2017. The Agents testified that they attempted to mitigate their loss by having a former occupant of the unit move back in on September 11, 2017; however, the new occupant was only willing to pay \$750.00 a month, the amount they previously paid for that unit. As it was almost half way through the month, the Landlord accepted the reduced rental amount and the new occupant moved into the rental unit and paid \$750.00 in rent for September 11 - October 10, 2017. The Agents testified that as full rent in the amount of \$800.00 was payable by the Tenant on September 4, 2017, the Tenant owes the balance of the \$800.00 rent payable for September 4 – October 3, 2017.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and I find that the Tenant was obligated to pay the monthly rent in the amount of \$800.00, on time and in full each month, up to and including the rental period ending July 3, 2017.

Based on the above, I find that the Tenant owes \$2,750.00 in rent for the period up to and including July 3, 2017. I also find that the Tenant owes \$1,733.35 for overholding the rental unit for the period of July 4, 2017 – September 8, 2017, calculated as described below.

Section 57 of the Act defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The Section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In the case before me, as per the 10 Day Notice that was subject to the previous decision; I find the tenancy ended on July 3, 2017. However, I am satisfied from the Landlord's undisputed testimony and evidence that the Tenant overheld the rental unit until they vacated the unit on September 8, 2017 after the Landlord obtained and served the Tenant with an Order of Possession dated August 31, 2017.

Residential Tenancy Policy Guideline #3 states a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the Act, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises.

As the Tenant remained in the unit for the full rental periods of July 4 - August 3, 2017, and August 4 - September 3, 2017, the landlord is entitled to receive a total of \$1,600.00 for

overholding those periods; \$800.00 for each of the periods noted above. In addition, since the Tenant remained in the rental unit a further five days until September 8, 2017, I find that the Landlord is entitled to overholding rent in the amount of \$133.35 (five days times the per diem rate of \$26.67).

Based on the above, I find that the Tenant owes to the Landlord \$4,483.35 in unpaid rent and for overholding the rental unit. Pursuant to section 72 of the Act, I also find that the Landlord is entitled to recover the \$100.00 filing fee and to retain, in full, the \$200.00 security deposit paid by the Tenant.

As a result, I find that the Landlord is entitled to a Monetary Order in the amount of \$4,383.35; \$4,483.35 in back owed rent and for overholding the rental unit, plus \$100.00 for the filing fee, less the \$200.00 security deposit held by the Landlord.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$4,383.35. The Landlord is provided with this Order 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.

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: October 3, 2017

Residential Tenancy Branch