



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENSON REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenant: CNR, ERP, MNDC, MNR, PSF
Landlord: OPR, MNR, FF

Introduction

This hearing was convened in response to cross applications by both parties pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows. The tenant applied August 14, 2017 for:

1. More time to make their application to cancel a Notice to End, and if successful, to Cancel a Notice to End for Unpaid Rent - Section 46 and 66
2. For the landlord to comply with the Act (unspecified)– Section 62
3. To set conditions on the landlord's right to enter – Section 70.

The landlord applied August 18, 2017 for:

1. An Order of Possession - Section 55
2. A Monetary Order for unpaid rent - Section 67
3. An Order to recover the filing fee for this application - Section 72

The applicant tenant was provided with a copy of the Notice of a Dispute Resolution Hearing dated August 14, 2017 after filing their application. The tenant, however, did not attend the hearing set for today at 9:30 a.m. The phone line remained open during the hearing of 15 minutes and was monitored throughout this time. The only party to call into the hearing was the landlord. As a result, the tenant's application was preliminarily **dismissed**.

I accept the landlord's evidence that the tenant was personally served with the application for dispute resolution and notice of hearing. The landlord was given opportunity to be heard, to present evidence and to make submissions. At the outset of the hearing the landlord testified the tenant vacated in mid to end of October 2017, therefore regaining *de facto* possession.

I preliminarily accept the landlord's application for unpaid rent contains adequate information that they are seeking to end the tenancy and to recover revenue or compensation due to the tenant's over holding of the rental unit pursuant to Section 57(3) of the Act.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began May 01, 2017 as a 3 month fixed term agreement further pursuant to Section 13(2)(f)(iv) of the Act requiring the tenant to vacate at the end of the fixed term on July 31, 2017. Under the tenancy agreement rent in the amount of \$1200.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$600.00 which they retain in trust. The tenant failed to vacate at the end of the fixed term as required and did not pay rent or compensate the landlord for over holding the unit, or its use and occupancy thereafter. It must be known that on August 04, 2017 the landlord served the tenant with a notice to end tenancy for non-payment of rent stating the tenant owed rent for August 2017 in the amount of the rent indicated in the tenancy agreement. The tenant applied to dispute the notice but did not pay the amount indicated in the Notice to End.

The tenant failed to pay the landlord for the duration of their occupancy of the unit after July 31, 2017. The landlord is claiming compensation for the period that the tenant occupied the rental unit after the tenancy ended.

Analysis

The tenant did not attend the hearing to defend their application – with the result that their application has been **dismissed**.

Based on the landlord's evidence I find that the tenancy ended July 31, 2017. The tenant did not vacate and effectively became an "overholding tenant" pursuant to **Section 57** of the Act. I find that the tenant vacated 3 months later in October 2017 and for which period the tenant did not compensate the landlord for their occupancy or overholding of the unit.

Based on the above facts I find that the landlord is entitled to compensation for the tenant's over holding of the unit equivalent to the payable rent during the tenancy. The landlord is also entitled to recovery of the filing fee. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Over holding compensation /loss of revenue for August 2017	\$1200.00
Over holding compensation /loss of revenue for September 2017	\$1200.00
Over holding compensation /loss of revenue for October 2017	\$1200.00

Filing fee for the cost of this application	\$100.00
Total monetary award	\$3700.00
<i>Less Security Deposit</i>	<i>-\$600.00</i>
Total Monetary Order / landlord	\$3100.00

Conclusion

The tenant's application is **dismissed**, without leave to reapply.

The landlord's application is granted.

I Order that the landlord retain the security deposit of \$600.00 in partial satisfaction of the claim and **I grant** the landlord an Order under Section 67 of the Act for the balance due of **\$3100.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: November 01, 2017

Residential Tenancy Branch