



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

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

- an order of possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing by way of conference call. The tenant did not attend this hearing, although I waited until 9:45 A.M. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 A.M. The landlord attending the hearing was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that on January 27, 2019, the tenant was sent, by way of Registered Mail, the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package"), which included the landlord's evidence. The Canada Post tracking number was provided as evidence during the hearing.

Section 90 of the Act determines that a document served by registered mail is deemed to have been received five days after service. As such, in accordance with sections 89 and 90 of the Act, I find that the tenant has been deemed served with the dispute

resolution hearing package, and accompanying evidence, on February 01, 2019, the fifth day after their registered mailing.

Preliminary Issue – Landlord’s request for an order of possession moot

At the onset of the hearing the landlord informed me that the tenant had vacated the rental unit on March 05, 2019. As the tenant has returned possession of the rental unit to the landlord, there is no need for me to consider the issue of possession as the issue is now moot. As such, I decline to proceed with the landlord’s request for an order of possession, and dismiss that portion of the landlord’s application without leave to reapply.

Preliminary Issue – Amendment of Landlord’s Application

At the time the landlord’s application was submitted, the landlord sought compensation for unpaid rent for the month of January 2019. At the onset of the hearing, the landlord provided that an amendment form to amend the landlord’s application was submitted. The landlord testified that the amendment form was served to the tenant while the tenant was still occupying the rental unit.

The landlord clarified that pursuant to the amendment form, he seeks a monetary order for unpaid rent which also includes rent owed for the months of February 2019 and March 2019. Therefore, the landlord’s monetary claim totals \$3,072.00, which consists of monthly rent owed in the amount of \$1,024.00 for each of January 2019, February 2019, and March 2019.

Accordingly, I amend the landlord’s application to reflect the foregoing pursuant to section 64(3)(c) of the Act and in accordance with rule 4.2 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below. The landlord provided undisputed evidence at this hearing, as the tenant did not attend.

The landlord testified that the tenancy began on February 16, 2016. The monthly rent was determined to be due on the first day of each month, and was set at \$950.00. The current monthly rent owed is \$1,024.00, as the rent was increased in accordance with the Act. The tenant provided a security deposit in the amount of \$475.00 which continues to be held by the landlord. The landlord provided as evidence a copy of a written tenancy agreement which confirms the details provided by the landlord orally. The landlord also provided copies of "Notice of Rent Increase" forms as evidence to depict that the rent was increased in accordance with the Act.

The landlord testified that the tenant had not paid rent for the month of January 2019, and that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), dated January 05, 2019, was issued as a result of the non-payment for that month.

The landlord testified that he issued the 10 Day Notice to the tenant on January 05, 2019, for \$1,028.00 in unpaid rent due on January 01, 2019, with a stated effective vacancy date of January 15, 2019. The landlord testified that the 10 Day Notice was served to the tenant by way of posting it to the door of the rental unit on January 05, 2018.

The landlord provide a copy of a copy of the Proof of Service of the Notice form showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit on January 05, 2019. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are included on the form.

The landlord testified that the tenant did not provide any rent for the months of January 2019, February 2019, and March 2019. The landlord testified that he was not aware of any reason that would entitle the tenant to deduct any amount from rent. The landlord

testified that the tenant was not permitted to withhold any portion of the rent owed, either by way of mutual agreement between the parties, or in accordance with the Act.

The landlord testified that the tenant vacated the rental unit on March 05, 2019.

Analysis

Section 90 of the Act provides that because the 10 Day Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on January 08, 2018, three days after its posting.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 7(1) of the Act establishes that a tenant who does not comply with the Act, *Residential Tenancy Regulation* (“*Regulation*”) or 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.

I find that in the matter before me, the landlord’s only recourse to mitigate any loss of rental income as a result of the tenant’s non-compliance with section 26 of the Act was to issue a 10 Day Notice and seek an Order of Possession on the basis of that Notice. Therefore, I find that the landlord has satisfied the requirement to mitigate under section 7(2) of the Act.

I find that since the tenant vacated the rental unit on March 05, 2019, the landlord could not have reasonably mitigated loss of rental income for the month of March 2019 by entering into a new tenancy in such short order. Therefore, I find that the landlord did not violate the provision of the Act which requires him to mitigate his loss resulting from a tenant’s non-compliance with the Act.

I accept the uncontested testimony provided by the landlord, which depicts that the tenant was not permitted to withhold any portion of the monthly rent owed at any time

during the tenancy, either in accordance with the Act or by mutual agreement between the parties.

The landlord has provided affirmed and uncontested evidence that the tenant failed to pay the monthly rent owed in the amount of \$1,024.00 for each of January 2019, February 2019, and March 2019, totaling \$3,072.00 in unpaid rent owed for those months. I find that the landlord has proven his entitlement to the rental arrears. Therefore, I find that the landlord is entitled to recover \$3,072.00 in rental arrears from the tenant. The landlord is entitled to a monetary order for the unpaid rent in the amount of \$3,072.00.

The landlord continues to hold the tenant's security deposit of \$475.00. In accordance with the offsetting provisions of section 72 of the Act, I allow the landlord to retain the tenant's security in the amount of \$475.00, in partial satisfaction of the monetary award. No interest is payable over the period of this tenancy.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 application filing fee from the tenant.

Conclusion

I order the landlord to retain the tenant's security deposit of \$475.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$2,722.00, calculated as follows:

Item	Amount
Unpaid Rent January 2019 , February 2019, and March 2019	\$3,072.00
Recovery of Filing Fee for this Application	100.00
Less security deposit of \$475.00 landlord permitted to retain	(450.00)
Total Monetary Order to Landlord	\$2,722.00

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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: March 11, 2019

Residential Tenancy Branch