



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPB, MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, for damages to the rental unit and to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenants' security deposit. The Landlord/Applicant did not attend the hearing and as a result, the hearing proceeded in his absence.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and utilities and if so, how much?
3. Is the Landlord entitled to compensation for damages and if so, how much?
4. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started in approximately 2002. Rent is \$900.00 per month payable on the 1st day of each month. The Tenants are also responsible for paying utilities and the accounts for them are in the Tenants' names.

The Landlord provided a copy of a 10 Day Notice to End Tenancy dated May 12, 2009 which indicates that as of May 1, 2009, the Tenants had rent arrears of \$1,050.00. On his application, the Landlord alleged that \$100.00 of this amount was for April rent, \$50.00 for late fees and \$900.00 for May rent. The Tenants deny receiving a copy of this document and deny that rent is in arrears. A certificate of service also provided by the Landlord does not indicate how or when the Notice was served although it is signed by the Landlord.

The Landlord also alleged on his application that the Tenants breached an agreement with the Landlord and in particular, claimed "disapproval of additions and landscape; deterioration of the rental property." In support, the Landlord provided photographs as well as a one page tenancy agreement. The Tenants claim they were not served with these documents.



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Analysis

Section 55 of the Act says that a Landlord can only apply for an Order of Possession once a Notice has been served. I find that there is insufficient evidence that the Landlord served the Tenants with the 10 Day Notice to End Tenancy dated May 12, 2009. Furthermore, I find that there is no evidence of a breach of an agreement with the Landlord. In particular, there are no terms in the written tenancy agreement that deal with additions or alterations to the rental property. Consequently, the Landlord's application for an Order of Possession is dismissed and the tenancy will continue.

In the absence of any evidence to support the Landlord's claim for unpaid rent, for damages to the rental unit or other damages, the Landlord's application for a monetary order is dismissed. The Landlord's application to recover the filing fee is also dismissed and his application to keep the Tenants' security deposit is dismissed with leave to reapply.

As a final note, the Landlord should be aware of section 7 of the Regulations to the Act which allows a Landlord to recover only the **actual bank charges** for an NSF cheque. It also allows him to charge a late fee provided that there is a term in the tenancy agreement to that effect and no more than \$25.00 is charged. The Parties' tenancy agreement says the Landlord may charge \$25.00 for NSF fees but does not contain a term with respect to late fees. Consequently, there is no authority for the Landlord to charge late fees and the term of the tenancy agreement providing that a \$25.00 fee will apply to all NSF cheques (regardless of what the bank actually charges) is in contravention of the Act. As a result, the Landlord may not charge \$50.00 for a late fee as he indicated on his application.

Conclusion

The Landlord's application for an Order of Possession and a Monetary Order is dismissed. The Landlord's application to recover the security deposit is dismissed with leave to reapply. 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: June 30, 2009.

Dispute Resolution Officer