



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

OPC, MNR

Introduction

This matter dealt with an application by the landlords to obtain a Monetary Order for unpaid rent. In the details of dispute and submissions the landlord also seeks to keep part of the security deposit due to cleaning in the rental unit. At the outset of the hearing the landlord attending withdrew their application for an Order of Possession for cause as the tenant has vacated the rental unit.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the tenant on March 26, 2011. The tenant was deemed to be served the hearing documents on March 30, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to keep all or part of the security deposit?

Background and Evidence

The landlord testifies that this tenancy started on December 01, 2010. Rent for this unit was \$700.00 per month due on the 31st day of each month in advance. The tenant paid a security deposit of \$345.00. The landlord has provided copies of the tenancy agreement, the move in and move out inspection reports, photographic evidence of the condition of the unit.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy for cause dated January 26, 2011. This was served to the tenant by posting it on her door on January 29, 2011 and had an effective date of February 01, 2011. The landlord testifies the tenant failed to move from the rental unit and did not dispute the Notice. The landlord states she allowed the tenant to remain in the unit until February 28, 2011 as long as she paid rent for February.

The landlord testifies the tenant did not move out on February 28, 2011 but told her on March 06, 2011 she would be moving from the rental unit the next day. The landlord went to the unit on March 08, 2011 and found the tenant had removed substantially all her belongings so she states she assumed she had moved out as agreed and proceed to change the locks of the unit. On March 10, 2011 the landlord states she received a text message from the tenant who said she had not finished moving out and accusing the landlord of locking her out of the unit. The tenant met with the landlord later that night and gave her a letter accusing her of changing the locks. A Move out condition inspection was arranged and the tenant and landlord attended this inspection but the tenant refused to sign the report. The landlord seeks to recover unpaid rent from March 01 to March 07, 2011 from the tenants' security deposit.

The landlord states the unit had not been cleaned to a reasonable standard, the floors and carpets had not been cleaned or vacuumed, there was minor damage to the drywall, garbage had been left outside the unit and the toilet was blocked with feces. The landlord states she cleaned the unit herself and unblocked the toilet after two hours work. The landlord seeks to recover \$100.00 for this cleaning work from the tenants' security deposit.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me. When a tenant is given Notice to end a tenancy she must move from the rental unit on the effective date of the notice or file an application to dispute the notice. However the landlord served the tenant with the One Month Notice on January 29, 2011 by posting this notice to the tenants' door. The Notice is therefore not deemed to have been served until three days later on February 01, 2011. s. 47(2) of the Act this states:

A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the notice is received, and

(b) 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.

With this in mind the effective date of the Notice would not be effective until March 31, 2011 as rent is due on the 31st of each month and the notice was not served until February 01, 2011. Therefore the Notice would not be effective until March 31, 2011 and the effective date is therefore amended according to s.53 of the *Act*.

However, the landlord accepted that the tenant moved from the unit and agrees she did change the locks to the unit therefore the landlord seeks only to recover unpaid rent from March 01 to March 07, 2011 to the amended sum of **\$158.06**. Consequently the landlord is entitled to recover this sum from the tenant and may deduct this sum from the security deposit held in trust by the landlord pursuant to s. 38 (4)(b) of the *Act*.

The landlord has also established her claim for cleaning costs to the sum of \$100.00. The landlord has provided sufficient evidence to support this claim as the evidence shows the tenant did not clean the unit to a satisfactory standard, she left garbage at the unit and the toilet was

left blocked. Therefore the landlord may deduct the sum of **\$100.00** from the security deposit held in trust by the landlord pursuant to s. 38 (4)(b) of the *Act*.

The landlord must return the balance of the security deposit to the tenant as follows:

Security deposit	\$345.00
Less cleaning costs	(-\$100.00)
Total amount to be returned to the tenant	\$86.94

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. I ORDER the landlord to keep **\$258.06** from the security deposit and return the balance of **\$86.94** to the tenant.

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: April 12, 2011.

Residential Tenancy Branch