



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid; to keep the security deposit; and to recover the filing fee associated with this application.

At the outset, the landlord stated that the tenants moved out of the rental unit on May 13th, 2011. Therefore the landlord's application for an Order of Possession is dismissed.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a basement suite. Pursuant to a written agreement, the tenancy started on September 15, 2009. The rent at the end of the tenancy was \$670.00. The parties had agreed that rent would increase by \$100.00 per month for an additional occupant. The tenant paid a security deposit of \$325.00.

In her documentary evidence, the landlord provided 5 photographs to support her submissions that the tenant was not living alone, and that the tenant was smoking in the unit, contrary to the terms of the tenancy agreement. The landlord provided receipts for rent and testified that the tenant paid the increased rental amount until January 2011. The landlord testified that a new boyfriend moved into the suite in February 2011 but the tenant stopped paying the additional monthly rate of \$100.00.

The landlord submitted a monetary claim as follows:

- Unpaid rent for February 2011: \$ 100.00
- Unpaid rent for April 2011: \$ 200.00
- Unpaid rent for May 2011: \$ 770.00
- Loss of June 2011 rental income: \$ 770.00
- Total: \$1840.00

The tenant testified that her new boyfriend came to visit her but did not reside in the unit. She explained that for this reason she paid rent based on a single occupancy for February 2011. She stated that she felt intimidated by the landlord and paid the increase for March 2011, but that she deducted it from the rent for April 2011. She said that she left in accordance with the 10 Day Notice to End Tenancy but that the landlord did not return her security deposit. The tenant clarified that her boyfriend spent an average of 4 to 5 nights per week in the unit.

Analysis

Based on the parties' testimony, I accept that the tenant's boyfriend spent a considerable amount of time with the tenant at the rental unit. Whether or not this frequency makes the tenant's boyfriend an additional occupant, I find that the landlord's observations and conclusions in that respect reasonable.

I find that the extent of the tenant's boyfriend visits at the unit justified the landlord in claiming the rent increase for usage and associated wear and tear, and that \$100.00 per month for that usage was reasonable.

The landlord chose to end the tenancy by serving the tenant with a Notice to End Tenancy; the tenant complied and left on the date specified on the notice. This choice is not compatible with a claim for future loss of rent because the tenant's obligation to pay rent ended when the landlord ended the tenancy on May 13th, 2011. In order to hold the tenant accountable for unpaid rent beyond that date, the landlord must mitigate her loss and hold the tenant accountable to abide by the tenancy agreement until the end of the term. The landlord cannot end the tenancy on one hand, and on the other hand demand that the tenant abide by the agreement. Having ended the agreement by serving a 10 Day Notice to End Tenancy, there is no longer a remedy available for the payment of future rent or loss of rental income.

Therefore I grant the landlord a monetary order for unpaid rent as follows:

- Unpaid rent for February 2011: \$100.00
- Unpaid rent for April 2011: \$200.00
- Unpaid rent for May: \$385.00 (half a month's rent)
- Total: \$685.00

Conclusion

The landlord established a claim of \$685.00. I authorize the landlord to retain the tenant's \$325.00 security deposit for a balance owing of \$360.00. Since the landlord was partially successful, I award the landlord recovery of the \$50.00 filing fee and pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$410.00.

This Order may be registered in the Small Claims 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: June 02, 2011.

Residential Tenancy Branch