

DECISION

Dispute Codes OPR, MNR, MNSD, FF, O

Introduction

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

- an Order of Possession pursuant to section 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 the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant's agent (the tenant) agreed that the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on her door on May 2, 2011. The tenant also confirmed that one of the landlord's staff members handed her a copy of the landlord's dispute resolution hearing package at the landlord's office between May 20 and May 24, 2011. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

At the hearing, the landlord testified that she understood that copies of the 10 Day Notice and the residential tenancy agreement were included in the landlord's application for dispute resolution. She said that these documents were sent by fax to the Residential Tenancy Branch (RTB) and were handed to the tenant. Neither the tenant nor the RTB received any written evidence from the landlord other than the landlord's application for dispute resolution and the Notice of a Dispute Resolution Hearing, the latter issued by the RTB. Under these circumstances, I find that neither party entered written evidence other than these two documents.

At the hearing, the parties agreed that the tenant vacated the rental unit on April 26, 2011. The landlord withdrew the request for an Order of Possession.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent for May 2011? Is the landlord entitled to retain the tenant's security deposit in part or in whole in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy commenced initially as a fixed term tenancy on October 1, 2009 and was subsequently converted to a month-to-month tenancy. Monthly rent at the end of this tenancy was set at \$1,025.00, payable in advance on the first of the month. Although the parties agreed that the landlord continues to hold the tenant's security deposit paid on September 10, 2009, they could not agree on the amount of that deposit. The landlord said that the amount of the security deposit was \$512.50, while the tenant said that she had a receipt for paying a \$520.00 security deposit.

The parties agreed that on April 20, 2011 the tenant provided written notice that she and her husband would be vacating the rental unit by April 26, 2011. The tenancy ended on April 26, 2011 when the rental premises were vacated and the keys returned to the landlord. The tenant provided oral testimony that she was told by a representative of the landlord that she only needed to provide five days notice because the landlord had identified another tenant would be able to move in by May 1, 2011. Although she said that she had witnesses to that discussion, she did not call these individuals as witnesses and provided no written statements from them. The landlord said that the tenant did not provide sufficient notice to avoid being responsible for the landlord's subsequent inability to rent the premises to another tenant until June 1, 2011. The landlord asked for permission to retain the tenant's security deposit plus a monetary award for the remaining one half of the unpaid rent for May 2011.

Analysis

Pursuant to section 63 of the *Act*, a dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During this hearing, the parties reached an agreement to settle their dispute.

1. The parties agreed that the landlord would retain the tenant's security deposit.
2. The landlord agreed to withdraw the remainder of the landlord's application for dispute resolution without leave to reapply.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

Conclusion

In order to implement the above settlement reached between the parties, I order the landlord to retain the tenant's security deposit plus interest. No interest is payable over this period.

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*.