



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, LRE, OPR, OPB, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside notices to end this tenancy and an order suspending the landlord's right to enter the rental unit and a cross-application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

At the hearing the tenants confirmed that they had substantially moved out of the rental unit and would be returning the keys after the hearing. The parties agreed that an order of possession was no longer required and I consider that claim to have been withdrawn. As the tenancy has ended, the issues raised by the tenants' application is moot and their application is therefore dismissed.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in September 2010 at which time the tenants paid a \$750.00 security deposit. The landlord claimed that the tenants paid just \$750.00 in rent in the month of April and paid no rent whatsoever in the month of May. The landlord provided a copy of her bank statement which shows that on April 4, a \$750.00 deposit was made and that on April 8 a second \$750.00 deposit was made. The landlord claimed that she herself made the April 4 deposit when she discovered that the tenants had not deposited their rent.

The tenants testified that they made a \$750.00 cash deposit at the landlord's branch on April 1 but it was not credited to the account until April 4. They further testified that they made a second \$750.00 deposit at another TD Canada Trust branch on April 8. The tenants acknowledged that they did not pay rent in May but argued that the landlord had breached the Act in that month.

Analysis

I find it more likely than not that the tenants paid the full amount of the rent owing in the month of April. The landlord's account statement seems to coincide with the tenant's version of events. The April 4 deposit is identified as a "deposit" while the April 8 deposit is identified as "GH 9032 – Deposit." The tenants' explanation that the first deposit was made to the landlord's branch whereas the second was made at a different branch serves to explain the discrepancy. The landlord had stated that when she discovered that the full rental payment was not credited to her account on April 1, she transferred money to cover the deficit. The account statement shows that a transfer of \$685.59 was made on April 4, which rectified the negative balance and gave her a balance of \$0. I find on the balance of probabilities that the deposit the landlord recalls was the transfer of \$685.59 and that the \$750.00 deposit on April 4 was the tenants' deposit. I find that the tenants fully paid the rent owing in the month of April and I therefore dismiss the claim for unpaid rent for that month.

Section 26(1) of the Act requires tenants to pay their rent in full regardless of whether the landlord has complied with the Act. I find that the landlord is entitled to recover the unpaid rent for May and I award her \$1,500.00. The landlord did not apply for recovery of the filing fee and therefore no order is made with respect to that fee.

Conclusion

The landlord has been awarded \$1,500.00. I order the landlord to retain the \$750.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of \$750.00. 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: June 08, 2011

Residential Tenancy Branch