



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' application for an Order of Possession and a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; authorization to retain the security deposit; and, recovery of the filing fee.

The landlords identified two tenants in making this application and sent hearing packages to each of the respondents via registered mail on July 19, 2011. The landlords submitted that the respondents were residing in the rental unit until the end of July 2011 based on observations of the property but that the respondents have since vacated the property. The registered mail was returned as unclaimed. The Act provides that documents are deemed to be received five days after mailing. Thus, a party to a dispute cannot avoid service by not accepting or refusing to pick up the registered mail. Since I was satisfied the respondents were sufficiently served with notification of this hearing, I proceeded to hear from the landlords with the respondents present.

As a preliminary matter, I noted that the written tenancy agreement named both respondents as tenants on the first page of the tenancy agreement; however, the tenancy agreement was executed by the female tenant only. Further, the rent cheques were signed by the female tenant only. The landlords explained that they dealt with the female tenant in entering into the tenancy and that the female tenant's husband was not available for signature of the tenancy agreement but that the husband was residing in the rental unit when he was not away working. I was not satisfied that the male respondent had entered into a tenancy agreement with the landlords and I amended the application to name the female tenant only.

Since the landlords submitted the rental unit has since been vacated I do not provide an Order of Possession with this decision and the remainder of this decision deals with the landlords' monetary claims only.

Issue(s) to be Decided

1. Have the landlords established an entitlement to unpaid rent and loss of rent from the tenant?
2. Are the landlords authorized to retain the security deposit in partial satisfaction of the amounts owed to the landlords?

Background and Evidence

The two-year fixed term tenancy commenced October 1, 2010 and the tenant was required to pay rent of \$2,200.00 on the first day of every month. The landlords collected a \$1,100.00 security deposit. The tenant's rent cheque for November 2010 was returned for insufficient funds; however, the landlords waived their entitlement to rent for that month as compensation to the tenant for a leak in the rental unit. The tenant's rent cheque for March 2011 was also returned; the rent cheque for April 2011 cleared; and then the rent cheques for May 2011, June 2011 and July 2011 were returned for insufficient funds.

The landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on July 5, 2011 indicating \$6,600.00 was outstanding as of June 1, 2011. The Notice was sent to the female tenant that same day via registered mail. The landlords explained that the Notice did not include unpaid rent for July 2011 as the rent cheque for July 2011 had not yet been returned by the bank. Also, as of the date of the hearing, the rental unit had not yet been re-rented.

The landlords are seeking to recover \$11,000.00 in unpaid rent and loss of rent for the months March through August, with the exception of April 2011. Provided as documentary evidence were copies of the tenancy agreement, the returned cheques, the 10 Day Notice, and registered mail receipts.

Analysis

Based upon the evidence before me, I find the landlords are entitled to receive from the tenant the unpaid rent for the months of March through July 2011, except April 2011 since it was paid. I also accept that the tenant is obligated to compensate the landlords for loss of rent for the month of August 2011. Therefore, I award the landlords the amount claimed in the amount of \$11,000.00 plus the \$100.00 filing fee paid for their application.

I authorize the landlords to retain the security deposit in partial satisfaction of the rent owed and provide the landlords with a Monetary Order for the balance remaining of \$10,000.00. The landlords must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as an Order of the court.

Conclusion

The landlords have been awarded compensation of \$11,100.00 for unpaid rent, loss of rent and their filing fee. The landlords have been authorized to retain the tenant's security deposit of \$1,100.00 and are provided a Monetary Order for the balance of \$10,000.00 to serve upon the tenant and enforce as necessary.

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: September 14, 2011.

Residential Tenancy Branch