



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPC MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain an Order of Possession for unpaid rent and cause, and to obtain a Monetary Order for unpaid rent, to retain the security deposit, for money owed for compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, have the Landlords suffered a loss and met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a month to month tenancy agreement that began on June 1, 2011. Rent is payable on the first of each month in the amount of \$1,350.00 and on May 15, 2011 the Tenant paid \$700.00 as the security deposit.

The Tenant confirmed receiving a valid 10 Day Notice to End Tenancy that was personally served to her on the date of issue, August 5, 2011, which lists \$625.00 outstanding rent that was due July 1, 2011. She did not dispute having outstanding rent and stated that when she attempted to pay June rent the Landlord refused it after which she began withholding rent payments because she was asked to leave.

The Agent testified payments were received as follows: \$700.00 May 15, 2011 as the security deposit; \$1,300.00 May 27, 2011 as partial rent for June 2011, \$675.00 on July 8, 2011, and \$1,000.00 on August 6, 2011. This leaves an accumulated balance due for rent of **\$1,075.00** (3 x \$1,350.00 Less \$1,300.00 + 675.00 + 1,000.00). He stated that he wished to withdraw their request to have the monetary claim set off against the security deposit because they wish to hold the security deposit in trust until after the Tenant has vacated the property and they can determine if there are any damages done to the suite.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlords would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicants pursuant to section 7.

In this instance, the burden of proof is on the Landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

Order of Possession. I find that the Landlords have met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenant failed to pay the rent within 5 days after receiving this notice, and that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, August 15, 2011, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Therefore I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent. The Landlords claim for accumulated unpaid rent of \$1,075.00 up to August 31, 2011, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first day of each month. As per the aforementioned I find the Landlords have met the burden of proof and I approve their request for a Monetary Order for **\$1,075.00**.

The Landlords have succeeded with her claim; therefore I award recovery of the **\$50.00** filing fee.

Any deposits currently held in trust by the Landlords are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND that the Landlords are entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Respondent Tenant.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,125.00** (\$1,075.00 + \$50.00). This Order is legally binding and must be served upon the Respondent 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: September 02, 2011.

Residential Tenancy Branch