



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of possession, a monetary Order for unpaid rent and the filing fee, and an Order to retain the security deposit in partial satisfaction of the claim.

The Landlord served both of the Tenants with the Application and Notice of Hearing by Registered Mail on October 05, 2011. The Landlord provided a copy of the Registered Mail receipts into evidence. The Tenants received the documents. Tenant SB attended the hearing. I am satisfied that the Tenants were properly served with the Notice and Application.

The Landlord and Tenant SB gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s):

The Tenants and the Landlord had a previous Dispute Resolution Hearing and received a decision dated September 26, 2011 from the Residential Tenancy Branch. The decision Ordered that the tenancy shall end on October 31, 2011, however, an Order of possession was not issued at that time as the Landlord had not requested one at that hearing.

The Tenant is still in the rental unit and the Landlord has now requested an Order of possession. I find that it is appropriate to grant the Order of possession to the Landlord effective October 31, 2011 at 1:00 P.M.

In response to the Landlord's Application, the Tenants submitted copies of hydro bills to the Residential Tenancy Branch. Tenant SB testified that she would like to claim a portion of the hydro bills from the Landlord. Tenant SB stated she has not served the evidence on the Landlord prior to the hearing and that she has not submitted an Application for Dispute Resolution. Tenant SB stated that the Landlord is difficult to personally serve as he is not regularly at the address he provided. The Landlord stated that he is currently renovating the residence at the address he provided and that he checks for mail there regularly and that is the address that he considers his mailing address. The Landlord stated he has not received any documents from the Tenants by

mail and that they also have his phone number and can reach him. As the Tenants have failed to apply for Dispute Resolution and have not provided a copy of their evidence to the Landlord prior to the Hearing, I decline to hear their evidence in relation to the hydro bills. The Tenants may apply for Dispute Resolution after this hearing and use the address confirmed by the Landlord as his mailing address, for service of any documents.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to a monetary Order for unpaid rent and the filing fee and an Order to keep all or part of the security deposit and/or pet deposit?

Background and Evidence

The parties confirmed that the tenancy commenced on October 01, 2010 with a monthly rent of \$1,300.00 due on the first of each month. The Landlord submitted a copy of the tenancy agreement as part of his evidence package. The parties confirmed that a security deposit of \$650.00 and a pet deposit of \$100.00 were paid on October 01, 2010. The Tenants have not yet moved out of the rental unit.

Tenant SB stated that they had not paid the \$1,300.00 rent for October 2011 and that they felt that they could withhold rent as they wanted to claim for a portion of their hydro bills from the Landlord.

The Landlord stated that the Tenants have not paid the rent for October and have not filed an Application for Dispute Resolution in relation to their hydro bills and the tenancy agreement states that hydro and electricity are not included in the rent. The Landlord states that the Tenants owe him \$1,300.00 rent for October 2011.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants have not paid the outstanding rent and section 26 of the Act prohibits the Tenants from withholding rent. The Tenants position that they are withholding rent because of a hydro bill dispute they wish to initiate against the Landlord, does not release the Tenants from their legal obligation to pay rent when it is due in accordance with the Act.

I find that the Landlord has established that unpaid rent in the amount of \$1,300.00 is owed to him for October 2011.

As the Landlord has succeeded in his Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. This brings the balance of the amount owing to the Landlord to \$1,350.00.

I order that the Landlord retain the security deposit (\$650.00) and the pet deposit (\$100.00), which add up to \$750.00, in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$600.00**.

Conclusion

I find that the Landlord is entitled to an Order of possession **effective at 1:00 P.M. October 31, 2011**. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlord is entitled to \$1350.00 comprised of unpaid rent and the filing fee. As I have Ordered that the Landlord retain the security deposit and pet deposit totaling \$750.00, I find that the Landlord is entitled to monetary Order for the balance owing pursuant to section 67 against the Tenant in the amount of **\$600.00**.

The Orders accompany the Landlord's copy of this decision. The Orders must be served on the Tenant and may be filed in the Supreme 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: October 31, 2011.

Residential Tenancy Branch