



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MND, MNR, MNDC, FF

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Landlord requesting a monetary Order for an unpaid security deposit, an Order of possession, a request for a monetary Order for issues related to damage to the unit, site or property and compensation for damage or loss, and recovery of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Matter(s):

The Landlord filed the Application for Dispute Resolution on time, pursuant to the service provisions set out in the Act and Residential Tenancy Policy Guideline.

The Landlord indicated several matters of dispute on the Application; however the primary issues that are appropriate to deal with during this proceeding, are the Notice to End Tenancy and the request for a monetary Order for an unpaid security deposit.

The Landlord’s other issues on the Application, the request for a monetary Order for issues related to damage to the unit, site or property and compensation for damage or loss are not sufficiently related to the primary issue to be dealt with together. Pursuant to 2.3 of the Rules of Procedure I have determined that it is appropriate to dismiss the Landlord’s unrelated disputes set out on the Application with liberty to reapply.

Issue(s) to be Decided

Is the Landlord entitled to an Order of possession?

Is the Landlord entitled to a monetary Order for an unpaid security deposit?

Background and Evidence

The Landlord submitted a copy of a Ten Day Notice to End Tenancy in evidence. The Ten Day Notice to End Tenancy states that it was issued on September 08, 2011.

Tenant DC confirmed that he had been served with this by the Landlord and that he did not dispute the Notice. Tenant DC stated that he and the other Tenant vacated the rental unit around September 18, 2011.

The Landlord confirmed that they have possession of the rental unit and that an Order for possession is no longer required. The Landlord stated that there is no outstanding rent owed by the Tenants, and that just the security deposit remains unpaid by the Tenants.

The Landlord submitted into evidence a copy of the tenancy agreement, which was signed by the Tenants on May 01, 2011. The tenancy agreement requests a security deposit of \$425.00, however the date the security deposit was due remains blank on the tenancy agreement.

The Landlord stated that she is seeking the security deposit as it was not paid when the tenancy commenced and has been outstanding since May 01, 2011. The Landlord states there are damages to the unit and she wishes the security deposit to be paid to cover those damages.

Tenant DC testified that no security deposit was ever paid to the Landlord.

Analysis

Based on the documentary evidence and the affirmed testimony of the parties, I find the following:

The Tenant has vacated the rental unit and the tenancy has ended. The Landlord confirmed that on or around September 18, 2011 the Tenants vacated the rental unit and she gained possession of the rental unit. She stated that an Order of possession is not required; as a result I amend the Landlord's Application to reflect that an Order of possession is no longer requested.

Section 47(1)(a) of the Act states that a tenancy may be ended where a security deposit is not paid within 30 days of the date of the tenancy agreement. The tenancy agreement is dated May 01, 2011. The Landlord failed to file this Application within 30 days of the security deposit being due under the tenancy agreement. A Landlord cannot request a security deposit at any time other than when the parties entered into the tenancy agreement, pursuant to section 20(a) of the Act. A security deposit does not meet the definition of "rent" set out in the Act. The Landlord confirmed that the Tenants have paid all rent in full.

I find that there is no outstanding rent and tenancy has ended. I also find that the Landlord cannot claim against a security deposit that is unpaid and I decline to Order the Tenants to pay a security deposit now that the tenancy has ended.

As a result, I dismiss the Landlord's request for a monetary Order for an unpaid security deposit.

As the Landlord was not successful in her Application, I decline to award recovery of her filing fee.

Conclusion

The tenancy has ended, the Tenants have moved out of the rental unit, and the Landlord has possession of the rental unit.

The Landlord's request for a monetary Order for a security deposit is dismissed.

I dismiss the Landlord's other issues related to the request for a monetary Order for damage to the unit, site or property and compensation for damage or loss, with liberty to reapply for Dispute Resolution.

I dismiss the Landlord's request for recovery of the filing fee from the Tenant in relation to the Application before me.

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