



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of this application.

The tenant and an agent for the landlord company attended the conference call hearing and both provided affirmed testimony. The parties were also given the opportunity to cross examine each other. During the course of the hearing, the parties advised that the tenant vacated the rental unit on January 19, 2012 and therefore the landlord's application for an Order of Possession is withdrawn.

The landlord provided an evidence package which was not received by the tenant because the landlord did not have a forwarding address for the tenant, and the landlord's agent testified that the evidence package was posted to the door of the rental unit after the tenant had vacated. I find that the landlord has served the tenant with the evidence as required under the *Residential Tenancy Act*, and all evidence and testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The parties agree that this month-to-month tenancy began on April 1, 2010 and ended on January 19, 2012. Rent in the amount of \$1,250.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$625.00 as well as a pet

damage deposit in the amount of \$625.00 and both deposits are still held in trust by the landlord. The tenant did not provide a forwarding address in writing to the landlord. The landlord's agent testified that a move-in and a move-out condition inspection report was completed, but did not provide copies for this hearing.

The landlord's agent testified that the tenant failed to pay rent when it was due for the month of January, 2012 and the tenant was served with a notice to end the tenancy. The tenant did not pay any rent for that month, and the landlord requests an order permitting the landlord to keep the pet damage deposit as well as the security deposit in satisfaction of the claim.

The landlord's agent further testified that another agent of the landlord company completed the move-out condition inspection report with the tenant, although this agent was not present. The tenant refused to sign the report and the landlord's evidence package shows some damage, however the landlord does not intend to make a claim for damages. The landlord had intended to make a claim for damages, but removed that portion of the application from the Landlord's Application for Dispute Resolution which was served on the tenant.

The tenant testified that there was no intention to not pay rent. The tenant did whatever was necessary to pay rent when it was due by not buying groceries or paying for utilities, but could not come up with January's rent.

The tenant agrees that no rent was paid for January, 2012, but does not agree that the landlord is entitled to a full month's rent, and does not agree that the landlord should keep the pet damage deposit because no damage was caused by a pet. The tenant also denied ever being asked to sign the move-out condition inspection report.

Analysis

In the circumstances, I accept that the tenant did not pay rent for the month of January, 2012 in the amount of \$1,250.00. The *Residential Tenancy Act* states that if a tenant fails to pay rent when it is due, the landlord may issue a notice to end the tenancy. If the tenant pays the rent in full within 5 days of service, the notice is of no effect. If the tenant does not pay the rent in full or apply for dispute resolution to dispute the notice within that 5 day period, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be no sooner than 10 days after the date the tenant is served with the notice, and the tenant must move out by that date. In this case, the tenant testified to moving out in accordance with the notice, although a copy of the notice was not provided for this hearing. The landlord, at that point, is entitled to rent for the month because a notice given by the tenant, in order to

comply with the *Act*, would not take effect until the end of the subsequent month. Therefore, I find that the landlord is entitled to a monetary order for \$1,250.00 for unpaid rent for the month of January, 2012.

The *Residential Tenancy Act* states that a landlord may not make a claim against a pet damage deposit except for damage caused by a pet, and I have no evidence before me of such damage. Further, the *Act* states that in the event that a tenant is ordered to pay any amount to a landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant, and I find it prudent to order such in this case.

With respect to damages, the landlord was at liberty to make an application for damages but chose not to do so. The landlord may not make another application claiming damages because the opportunity to do so existed when this application was made, but the landlord declined.

The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed without leave to reapply, as withdrawn by the landlord.

I hereby order the landlord to keep the security deposit and pet damage deposit in the amount of \$1,250.00 in satisfaction of the claim, and I grant the landlord a monetary order in the amount of \$50.00 pursuant to Section 67 of the *Residential Tenancy Act* for the filing fee for the cost of this application.

This order is final and binding on the parties and may be enforced.

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: February 13, 2012.

Residential Tenancy Branch