



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for an order permitting the landlords 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.

One of the named landlords attended the conference call hearing, provided evidence in advance of the hearing, and gave affirmed testimony. The landlord also called a witness who gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents personally, the tenant did not attend. The landlord's witness testified to handing the envelope directly to the tenant at the rental unit after asking the tenant's name. The landlord testified that the documents in the envelope provided to the witness were the Landlord's Application for Dispute Resolution, evidence and notice of hearing, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided have been reviewed and are considered in this Decision.

During the course of the hearing, the landlord stated that the tenant moved from the rental unit on February 1, 2012, and therefore an Order of Possession is not required and the landlords withdraw that portion of the application.

Issue(s) to be Decided

The issues remaining to be decided are:

- Are the landlords entitled to a monetary order for unpaid rent or utilities?
- Are the landlords 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 landlord testified that this month-to-month tenancy began on July 15, 2011 and ended on February 1, 2012. Rent in the amount of \$1,200.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$600.00 and no pet damage deposit was collected. The landlords still hold the \$600.00 security deposit in trust, and the tenant has not provided the landlord with a forwarding address in writing. No move-in condition inspection report was completed at the outset of the tenancy, nor was a move-out condition inspection completed at the end of the tenancy.

The landlord further testified that the parties had agreed that the tenant could pay the rent between the 1st and 7th of each month. The tenant did not pay the landlord any rent for December, 2011 or for January, 2012. On January 19, 2012 the landlords personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of the first page of the 2-page notice was provided for this hearing. It states that the tenant failed to pay rent in the amount of \$2,400.00 that was due on the 13th day of January, 2012 and contains an expected date of vacancy of January 29, 2012. The notice is dated January 19, 2012.

Later that evening, the tenant called the landlords indicating that the tenant would pay the rent and wanted to stay in the rental unit. The landlords agreed if the tenant paid the rent. The tenant replied that rent would be paid the next day but the landlords did not hear from the tenant at all.

The landlords received a phone call from a neighbour to the rental unit on February 1, 2012 stating that there was a U-Haul trailer at the rental unit and warned that the tenant was moving. The landlord went to the rental unit and the tenant advised that the tenant had decided to move out. The landlord went back to the rental unit the following day and found that the rental unit had not been cleaned and the tenant had left unwanted items, such as dishes, clothing and garbage behind.

The landlord testified that the 2 landlords cleaned for 2 days for about 6 hours each, for each of the 2 days, both inside and outside the rental unit.

The rental unit has not yet been re-rented. The landlord testified that advertisements were placed on Kijiji and on the landlords' own website as well as in a local newspaper. The newspaper advertisements were placed on February 2, 2012 for issues to run February 6 to February 24, 2012. The landlord was given the opportunity to provide an

invoice for the advertisement, which was provided immediately after the hearing. The cost for placing the advertisement was \$51.50.

The landlords claim \$2,400.00 in unpaid rent, \$1,200.00 for loss of revenue due to the tenant's failure to give the landlords the required written notice to vacate, \$600.00 for cleaning, and \$50.00 for the cost of this application, for a total of \$3,775.00.

Analysis

Firstly, with respect to unpaid rent, I accept the testimony and evidence provided by the landlord and I find that the tenant owes the landlords rent for the months of December, 2011 and January, 2012 in the amount of \$2,400.00.

With respect to the landlords' application for loss of revenue for the month of February, 2012, I accept the testimony of the landlord that the parties spoke after the notice to end tenancy was issued by the landlords, and the parties agreed that if the rental arrears were paid, the tenant would be permitted to stay in the rental unit and the notice to end tenancy would be cancelled. The tenant did not pay the rental arrears and did not move from the rental unit by the date contained in the notice to end tenancy. The landlord also provided evidence of having advertised the rental unit for rent on February 2, 2012, being the day after discovering that the tenant was moving out. Therefore, I find that the tenant is liable to the landlord for rent for the month of February, 2012 in the amount of \$1,200.00.

The landlords did not claim damages in the application for dispute resolution, and therefore I decline to make such an order; the tenant has not been put on notice that the landlords make that claim. Also, the *Act* requires the landlords to complete a move-in and a move-out condition inspection report. In this case, no such reports were completed, and therefore I have no evidence before me that the rental unit was in any different condition after the tenant moved out than it was when the tenant moved in.

Since the landlords have been partially successful with the application before me, the landlords are also entitled to recovery of the \$50.00 filing fee for the cost of this application.

The *Act* also states that where a tenant is ordered to pay any amount to a landlord, the amount may be deducted from any security deposit or pet damage deposit held by the landlord, and I find it prudent to make such an order in this case. Therefore, I order the landlords to keep the security deposit in the amount of \$600.00, and I grant the landlords a monetary order for the difference in the amount of \$3,050.00.

Conclusion

For the reasons set out above, the landlords' application for an Order of Possession is hereby dismissed as withdrawn.

I order the landlords to keep the security deposit in the amount of \$600.00 and I grant a monetary order in favour of the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,050.00.

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: March 05, 2012.

Residential Tenancy Branch