



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNSD MNR MNDC MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, for money owed or compensation for damage or loss under the ct, regulation or tenancy agreement, for damage to the unit, site, or property, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the Act, sent via registered mail on May 23, 2012. Mail receipt numbers were provided in the Landlord's evidence. Based on the submissions of the Landlord, I find each Tenant to be served notice of this proceeding in accordance with the Act.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me. No one appeared on behalf of the Tenants despite them being served notice of this proceeding in accordance with the Act.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. If the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord provided copies of the tenancy agreement and parking agreement into evidence which confirms the parties entered into a fixed term tenancy agreement that began on May 1, 2009 and switched to a month to month tenancy after April 30, 2010. Rent is payable on the first of each month in the amount of \$1435.00 and on or before May 1, 2009 the Tenants paid \$700.00 as the security deposit.

The Landlord confirmed that on January 15, 2012 the Tenants entered into a written agreement for parking at a cost of \$45.00 per month. He advised that it is their practice to keep the parking contracts separate from the tenancy agreements.

The Landlord submitted a copy of a 10 Day Noticed into evidence that was issued May 7, 2012 and when the Tenants failed to pay May 1, 2012 rent a 10 Day Notice to end tenancy was issued and posed to their door on May 7, 2012.

The Landlord stated the Tenants vacated the property on May 31, 2012 and gave him a personal cheque to cover the outstanding balance. The Tenants have not provided the Landlord with a forwarding address.

The Landlord advised he is withdrawing his request for an Order of Possession and for June 2012 rent; however he is still seeking the monetary order as he has not received confirmation that the Tenants' personal cheque has cleared. He stated he was concerned that the personal cheque will bounce and therefore he would like the monetary order as back up. The Landlord acknowledged that he understood that if the Tenants' payment cleared the bank then the monetary order would become void as payment had been satisfied.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord 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 Applicant pursuant to section 7.

The Landlord claims for unpaid rent of \$1,435.00 for May 2012. Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the aforementioned, I find that the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the Landlord has met the burden of proof and I award them a monetary claim of **\$1,435.00** for May 2012 unpaid rent.

The evidence supports that the tenancy agreement provides for the Landlord to collect late payment charges of \$25.00, in accordance with section 7 of the Residential Tenancy Regulation. As the Tenants have been late in paying their May 2012 rent, the

Landlord is entitled to claim the late payment fee. Accordingly I award the Landlord **\$25.00**.

The parties entered into a separate contract for parking that was not a term stipulated in the tenancy agreement. This dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Parking contracts do not fall under the *Residential Tenancy Act*; therefore I decline to make findings pertaining to this issue. The Landlord is at liberty to seek remedy through another Court who has jurisdiction in such matters.

The Landlords have primarily succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

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

Conclusion

The Landlord withdrew his request for an Order of Possession.

The Landlords have been issued a Monetary Order for **\$1,510.00** (\$1,435.00 + \$25.00 + \$50.00). This Order is legally binding and must be served upon the Tenants.

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: June 13, 2012.

Residential Tenancy Branch