



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This is an application filed by the Landlord for an order of possession and a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

The Landlord attended the hearing by conference call and gave undisputed testimony. The Tenant did not attend. The Landlord stated in his direct testimony that the Tenant was served with the notice of hearing package by Canada Post Registered Mail on January 19, 2013. I accept the undisputed testimony of the Landlord and find that the Tenants were properly served.

At the beginning of the hearing the Landlord stated that the Tenants had vacated the rental unit on January 18, 2013 and no longer required an order of possession. The Landlord also stated that he was able to re-rent the unit to new Tenants for February 1, 2013.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background, Evidence and Analysis

The Landlord has submitted as documentary evidence a copy of the 2 page, 10 day notice to end tenancy issued for unpaid rent dated January 1, 2013. The Landlord also stated in his direct testimony that he currently holds a \$800.00 security deposit paid in June of 2012 by the Tenants.

The Landlord states that the Tenant was served with the 10 day notice to end tenancy for unpaid rent dated January 1, 2013 on January 2, 2013 in person at the rental unit.

The notice states that rent of \$1,800.00 was due on January 1, 2013 and unpaid. The notice also displays a move-out date of January 12, 2013. The Landlord states that since the notice was served, no rent has been paid as of the date of this hearing.

The Landlord seeks a monetary claim of \$4,375.00. This consists of \$1,800.00 in unpaid rent for January, \$1,600.00 in damages to the front doors, \$175.00 for carpet cleaning/shampooing and \$1,800.00 for the loss of rental income for February. The Landlord has clarified that the \$1,600.00 in damages to the front doors and the \$175.00 for carpet cleaning/shampooing were based upon estimates. The Landlord states that the damage to the doors cost \$800.00 and \$329.00 for the carpet cleaning.

I accept the Landlord's undisputed testimony that the 10 day notice to end tenancy for unpaid rent dated January 1, 2013 was served on the Tenants on January 2, 2013 in person. I find based upon the direct testimony of the Landlord that the Tenants failed to pay the rent within the allowed 5 day time period and also did not file for dispute resolution to dispute the notice. The Tenants are presumed to have accepted that the Tenancy ended. Based upon the above, I find that the Tenants failed to pay rent of \$1,800.00.

The Landlord also seeks \$800.00 (front door repairs) and \$329.00 (carpet cleaning/shampooing) for damages to the rental unit.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord has failed to provide sufficient evidence to satisfy me of any damages or loss. The Landlord stated that the original claim was based upon his own estimates, but has failed to provide proof of an actual amount via any invoices/receipts. The Landlord has also failed to provide any proof of damage. As such, I find that the Landlord has failed to establish a claim for damages. This portion of the claim is dismissed.

The Landlord is also seeking recovery of \$1,800 for lost rental income for February. As the Landlord has clarified that he was able to re-rent the unit for February 1, 2013 immediately following the Tenants departure, I dismiss this portion of the claim as the Landlord has suffered no losses.

The Landlord has established a total monetary claim of \$1,800.00 for unpaid rent. The Landlord is also entitled to recovery of the \$50.00 filing fee. The Landlord is ordered to retain the \$800.00 security deposit in partial satisfaction of the claim and is granted a monetary order under section 67 for the balance due of \$950.00.

Conclusion

The Landlord is granted a monetary order for \$950.00.
The Landlord may retain the security deposit.

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 12, 2013

Residential Tenancy Branch

