



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MT, CNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order and an application by the tenants for an order setting aside a notice to end tenancy. Both parties participated in the conference call hearing.

At the hearing, the parties agreed that the tenants had vacated the rental unit on March 28, 2013. I find that as the tenants are no longer living in the rental unit, the landlord's claim for an order of possession and the tenants' claim for an order setting aside the notice to end tenancy are moot and I consider those claims to have been withdrawn. The hearing proceeded to address only the landlord's monetary claim.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenants moved into the rental unit on March 3, 2013 and that they were obligated to pay \$750.00 per month in rent. They further agreed that on March 1, the tenants gave the landlord \$200.00. The landlord characterized this as a security deposit while the tenants claimed that this was a partial rent payment. The parties agreed that the tenants gave the landlord a further \$550.00 and agreed that this was a rental payment.

The parties also agreed that on March 28, the landlord removed the tenants' belongings from the rental unit and placed them in the driveway, evicting the tenants from the unit.

Analysis

I find that the tenants were contractually obligated to pay \$750.00 per month in rent and that they paid \$550.00 in rent to the landlord. I find it more likely than not that the \$200.00 paid on March 1, 2013 was a security deposit.

I find that the landlord is entitled to recover the rent which is unpaid for March. However, I find that the landlord acted in contravention of section 57 of the Act which prevents a landlord from removing tenants from a unit without a writ of possession and therefore he illegally evicted the tenants on March 28 preventing them from occupying rental unit from March 28 – 31 inclusive. Accordingly, I find that the landlord is not entitled to recover 4 days of rent at a rate of \$24.19 per day. I award the landlord \$103.24.

Although the landlord did not apply to retain the security deposit, section 72 of the Act permits me to apply a security deposit to any order made in favour of a landlord and I find it appropriate to do so in these circumstances. As I have found that the \$200.00 paid on March 1 was a security deposit and as I have awarded the landlord \$103.24, I order the landlord to retain this amount from the security deposit in full satisfaction of his claim. Given the landlord's disregard for the Act, I dismiss the claim for recovery of the filing fee.

Residential Tenancy Policy Guideline #17 provides that when an arbitrator has ordered that a landlord may retain part of a deposit and when there is a balance remaining, the arbitrator will order that the balance be returned to the tenant whether or not the tenant has applied for its return.

I therefore grant the tenants a monetary order under section 67 for \$96.76 which represents the balance of the security deposit. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants are granted a monetary order for \$96.76.

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: April 12, 2013

