



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties appeared and had an opportunity to be heard.

At the beginning of the hearing the parties advised that the tenant had moved out of the rental unit and an order of possession was not required.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This one year fixed term tenancy commenced February 1, 2013. The monthly rent of \$1000.00 was due on the first day of the month. The tenant paid a security deposit of \$500.00 and \$100.00 towards the pet damage deposit. In addition to the terms set out in the written tenancy agreement there was an oral agreement that the tenant would pay \$20.00 a month towards the utilities.

The landlord issued and served a 10 Day Notice to End Tenancy for Non-Payment of Rent on May 16.

The landlord and tenant agreed that the tenant had not paid the May or June rent, nor had she paid the monthly utility fee. The tenant testified that she did not pay the rent because of maintenance issues. She also testified that she did not have an order from the Residential Tenancy Branch allowing her to withhold the payment of rent.

The tenant testified that her new place was not ready until June 3 and that she moved out on June 5. She says she spoke to the property manager before she moved out and advised her where the keys would be left. The landlord says the call was just to advise when she was going to move out and that the keys were not left. He had the locks changed on June 6 and he testified that the cost was \$300.00.

The power bill was in the name of the upstairs tenant, who collects the tenant's portion from her. The tenant testified that she and the upstairs tenant have agreed that she

owes him \$226.00 for the most recent bill, which she has promised to pay. The landlord says the upstairs tenant gave him the bill, which is still unpaid, plus there is still another bill coming.

Analysis

Section 26(1) of the *Residential Tenancy Act* provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulation or the tenancy agreement, unless the tenant has an order from the Residential Tenancy Branch allowing the tenant to withhold payment of all or any portion of the rent.

The tenant did not have a right under the Act to withhold payment of the rent for the \$20.00 utility fee. Accordingly, she is responsible for the May rent and the utility fee for February, March, April and May, a total of \$1080.0.

Although the landlord gave evidence about other costs, including the cost of new locks and the power bill, his application for dispute resolution only claimed \$1065.00. The landlord will have to file a new application for dispute resolution for these costs, and any other claims that he may wish to make.

Conclusion

I find that the landlord has established a total monetary claim of \$1130.00 comprised of arrears of May rent in the amount of \$1000.00, arrears of the monthly utility fee in the amount of \$80.00, and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and pet damage deposit in the amount of \$600.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$530.00. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.

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 18, 2013

Residential Tenancy Branch