



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOUNDARY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

The landlord/applicant did not attend the hearing. The tenant gave evidence that they had been served with the Notice to end Tenancy by posting it on the door and personally with the Application for Dispute Resolution. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated July 9, 2013 for unpaid rent. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

Background and Evidence:

The landlord/applicant did not attend the hearing scheduled for 1 p.m. The line remained open until 1:16p.m. and the landlord had still not joined the conference call so the hearing proceeded in their absence. The tenant was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced on January 15, 2011, a security deposit of \$437.50 was paid and rent is currently \$875 a month.

The landlord is claiming \$2625 in rental arrears and loss. The tenants remain in possession of the unit and strongly dispute the amount claimed by the landlord. They submitted evidence of large cracks and leaking water in their living room. They said the

leak started in September 2012, unsuccessful attempts were made to patch it and it got so severe by April 2013, that management put a large plastic bag over it and they had to empty the collected water into a garbage bucket daily. At that point, they said the manager promised them a rent reduction but she never got back to them so they began withholding rent. The tenants submitted photographs which graphically showed the problem. They said the leak was finally fixed on July 2013 after new management took over. They estimate the living room affected is about half the size of the apartment.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

I find the landlord did not attend the hearing to support their claim for unpaid rent and the tenant strongly disputes the amount. I hereby dismiss the application of the landlord.

As this is not the tenants' application, I have no jurisdiction to grant them a rebate of rent under section 65 of the Act. However, based on the evidence provided by the tenant to dispute the landlord's claim, I would recommend that the landlord enter into a settlement agreement with the tenant for a reduced claim for arrears and rental loss. For example, the rent might be reduced by the proportionate size of the living room to the whole apartment for April to July 2013 (4 months x $\frac{1}{4}$ or $\frac{1}{2}$ dependent on size). This is a recommendation only; it does not authorize the tenant to reduce or withhold the rent and if they do so, the landlord may legally serve another 10 day Notice to End Tenancy. They must make an Application if they want legal authority to reduce or withhold rent..

Conclusion:

I dismiss the application of the landlord and find them not entitled to recover the filing fee.

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: August 29, 2013

Residential Tenancy Branch