



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This is an application for a monetary order for \$1600.00 for unpaid rent, and a request to retain the \$500.00 security deposit. The applicants are also requesting recovery of the \$50.00 filing fee.

The applicants also filed an amendment to the application on July 22, 2013, however they failed to serve that amendment by the method **required** under section 89 of the residential tenancy act.

Section 89 of the residential tenancy act states:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, **must be given in one of the following ways:**

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1)
[director's orders: delivery and service of documents].

In this case the applicant's posted the amended application for dispute resolution on the tenant's door, and posting of the documents is not one of the **required** methods of service.

The applicant argued that they had insufficient time to serve the documents by one of the required methods; however the applicant's were informed on May 30, 2013, at the original date set for the hearing, that an amendment would be required, and therefore they had two months to file and serve that amendment.

I do not find it reasonable that the applicants waited until the last minute to file their amendment and then argue they had insufficient time to serve the documents.

I am therefore unwilling to allow the amendment to the application, and I will only allow the original claim for outstanding rent of \$1600.00 and a request to retain the security deposit.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Are the applicants entitled to an order for outstanding rent totaling \$1600.00, and recovery of their filing fee?

Background and Evidence

The applicant's testified that:

- On February 20, 2013 the tenants gave them a notice to end tenancy with an end of tenancy date of April 1, 2013.

- The tenants subsequently moved out of the rental unit on March 3, 2013 however they failed to pay the March 2013 rent.
- They are therefore requesting an order for the tenants to pay the full outstanding rent of \$1600.00.

The respondents testified that:

- They did give notice to end the tenancy for the end of March 2013 and they fully intended to pay the March 2013 rent.
- They did not move out by March 3, 2013, however they were pretty much completely moved out by March 7, 2013.
- There was a confrontation at the rental property with the landlords, when the landlords block their access to the rental unit even though they still had legal possession of the rental unit.
- As a result of the confrontation the police were called, and the police advise them to have no further contact with the landlords until the dispute resolution hearing.
- They therefore have not paid the March 2013 rent because of the police advice to have no contact with the landlords.
- Further because they moved out of the rental unit early they believe rent should be prorated.

Analysis

In this case the tenants gave proper notice to end the tenancy at the end of March 2013; however they are still responsible for the rent for the month of March 2013.

The tenants vacated the rental unit prior to the end of March 2013; however they are still responsible for the full month's rent and I will not be prorating the rent.

I therefore allow the landlords claim for the full outstanding rent of \$1600.00 and order recovery of the \$50.00 filing fee.

The landlords had also requested to retain the full security deposit, due to damages they alleged were caused by the tenants during the tenancy, however the landlords did not do the required move-in inspection report at the beginning of the tenancy and therefore their right to claim against the security deposit for damages is extinguished pursuant to section 23 of the residential tenancy act. The amount of the security deposit will therefore be deducted from the outstanding rent owed.

Conclusion

I have allowed a total claim of \$1650.00 and I therefore order that the landlords may retain the full security deposit of \$500.00, and I have issued a monetary order in the amount of \$1150.00.

As stated previously the \$1279.20 amendment to the application is dismissed.

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: July 31, 2013

Residential Tenancy Branch

