



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyline Apartments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and money owed or compensation for damage or loss, for authority to retain the tenants' security deposit, and to recover the filing fee.

The landlord appeared; the tenants did not appear.

The landlord gave evidence that they served tenant EH with their Application for Dispute Resolution and Notice of Hearing by leaving it with that tenant on October 12, 2013, and tenant MC by registered mail on October 13, 2013. The landlord supplied the receipt and tracking number of the registered mail.

I find the tenants were served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-The landlord said that the tenants vacated the rental unit by October 31, 2013 and no longer required an order of possession for the rental unit; as a result I excluded that portion of the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation and to recover the filing fee?

Background and Evidence

The written tenancy agreement supplied by the landlord reflects that this tenancy began on September 1, 2011, monthly rent listed on the tenancy agreement is \$1175, and a security deposit of \$587.50 was paid by the tenants at the beginning of the tenancy.

The landlord gave evidence that on October 2, 2013, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting it on the tenants' door, listing unpaid rent of \$540 as of October 1, 2013. The effective vacancy date listed on the Notice was October 15, 2013.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenants had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the monthly rent listed in the tenancy agreement had been increased from \$1175 to \$1240 by virtue of a notice of a rent increase issued to the tenants in June, effectively raising the rent on October 1, 2013. The landlord failed to supply a copy of the notice of rent increase and said that the rent was increased by 4%.

The tenant said that the amount of \$540 listed as unpaid rent on the Notice reflected a payment of \$700 by the tenants; however the cheque for \$700 was dishonoured by the bank and returned to the landlord. The landlord submitted that the tenants then paid \$800 on October 5, leaving a balance of \$440 as a rent deficiency for October.

The landlord has also claimed, in addition to the filing fee, the amount of a NSF bank charge of \$67.50.

The landlord said he would just like to keep the tenants' security deposit in full satisfaction of their monetary claim and that he was not requesting any further monetary compensation from the tenants.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

As the tenancy is over by virtue of the tenants vacating the rental unit, the landlord withdrew their request for an order of possession for the rental unit.

As to the landlord's monetary claim, I am unable to find that the landlord was entitled to collect \$1240 for the month of October as the landlord failed to supply a copy of the notice of the rent increase issued to the tenants and I was therefore unable to examine the notice for compliance with the form and content requirements of the Act.

I therefore find that the landlord was entitled to receive \$1175 from the tenants for monthly rent as required by the tenancy agreement, and that they paid only \$800. I therefore find that the landlord is entitled to a monetary award for a rent deficiency of \$375.

As to the landlord's request for a NSF fee of \$67.50, I dismiss this claim as the landlord is entitled to receive only a maximum of \$25 as a fee for the return of a tenant's cheque by a financial institution, under section 7 of the Residential Tenancy Regulation, and as the landlord failed to submit proof of any charge by their bank.

I allow the landlord to recover their filing fee of \$50.

I find that the landlord is entitled to a monetary award of \$425, comprised of unpaid rent of \$375 and the \$50 filing fee paid by the landlord for this application.

Conclusion

The landlord's application has been partially successful as I have granted them a monetary award of \$425.

At the landlord's request, I allow the landlord to retain from the tenants' security deposit the amount of \$425 in satisfaction of their award.

As I have found that the landlord is entitled to only a portion of the tenants' security deposit, I have not granted the tenants a monetary order for the balance remaining from their security deposit, in the amount of \$162.50, as I have no evidence that the tenants have given the landlord their written forwarding address. At such time as the tenants have complied with this requirement of section 38 of the Act, the landlord is directed to return the balance of 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* and is being mailed to both the applicant and the respondents.

Dated: November 20, 2013

Residential Tenancy Branch

