



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for an Order of Possession and a Monetary Order for unpaid rent or utilities. The landlords also applied to keep all or part of the pet damage or security deposit and to recover the filing fee from the tenants for the cost of the application.

The landlords served the tenants personally with a copy of the application and evidence used for this hearing. The landlords provided a proof of service document which declares that the tenants were served the hearing documents personally with a witness. Based on this, and in the absence of any evidence from the tenants to contradict this, I find that the tenants were served the hearing documents by the landlords as required by the Residential Tenancy Act (referred to as the Act).

One of the landlords appeared for the hearing. There was no appearance for the tenants or any submission of documentary evidence prior to the hearing, despite being served notice of the hearing in accordance with the Act. The landlord's affirmed testimony and documentary evidence was carefully considered in this decision.

At the start of the hearing the landlord withdrew the portion of the application relating to a request for an Order of Possession as the tenants had left the rental suite.

Issue(s) to be Decided

- Is the landlord entitled to unpaid rent and utilities for April, 2013 to November, 2013?
- Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that the tenancy started in May 15, 2013 for a fixed term of one year. The landlords and tenants signed a written tenancy agreement and the landlords collected a security deposit from the tenants in the amount of \$800.00 on May 13, 2013. Rent in the amount of \$1,600.00 was payable by the tenants on the first day of each month.

The landlord's agent testified that the tenant had failed to pay rent since April, 2013. Despite repeated chances given to the tenants by the landlords to make payment, the nonpayment of rent continued until eventually the landlords served the tenants personally with a 10 Day Notice to End Tenancy for Unpaid Rent on October 25, 2013 with a witness. The landlord testified that the tenants had also failed to pay water utility charges every quarter for the year of 2013 which the landlord would provide the tenants a copy of the utility bill before payment was expected to be made.

The notice to end tenancy was provided as evidence along with a signed proof of service document verifying this method of service. The notice shows an expected date of vacancy of November 5, 2013, for a total amount of \$9,600.00 of unpaid rent due on October 1, 2013 and \$585.75 in unpaid utilities relating to the water bills due on October 14, 2013.

As a result, the tenant left the rental suite on November 10, 2013. The landlord was unable to re-rent the property until December 1, 2013 after using this time to clean and repair damages the tenants had caused. As a result, the landlords claim additional unpaid rent for November, 2013 in the amount of \$1,600.00.

Analysis

I am satisfied that that the content of the notice to end tenancy conformed with the requirements of the Act. Based on the landlords' evidence, including the notice to end tenancy and the absence of any evidence from the tenants to refute the evidence, I find that the tenants owe the landlords \$11,200.00 in unpaid rent; this includes November, 2013 rent unpaid by the tenants and the fact that the landlords could not re-rent out the suite until December 1, 2013 to mitigate their losses.

Section 46(6) (b) of the Act states that if utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may given notice under this section.

The landlords served the tenants with a notice to end tenancy which detailed the demand for utility payments. As 30 days have lapsed since this was served to the tenant on October 25, 2013, I accept the evidence of the landlords that the utility payments in the amount of \$585.75 have not been paid and the landlords are awarded this amount.

As the landlords have been successful in this matter, the landlords are also entitled to recover from the tenants the \$100.00 filing fee for the cost of this application. Therefore, the total amount awarded to the landlords is \$11,885.75.

As the landlords already hold an \$800.00 security deposit, I order the landlords to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the landlords are awarded \$11,085.75.

Conclusion

For the reasons set out above, I grant the landlords monetary compensation pursuant to Section 67 of the Act in the amount of **\$11,085.75**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) 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: December 18, 2013

Residential Tenancy Branch

