



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary matter

At the outset of the hearing the tenants stated that they vacated the rental unit on November 7, 2013, which was confirmed by the landlord. As a result an order of possession is no longer required.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?
Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

The landlord's agent testified that the tenants rent cheque for October was returned for insufficient fund and on October 13, 2013, the landlord had issued a notice to end tenancy for non-payment of rent, in the amount of \$2,840.00, which was for unpaid rent for October and a balance owing from previous months. The landlord's agent stated the tenants did not move out of the rental unit on the effective vacancy date and remained in the rental unit until November 7, 2013. Filed in evidence is a copy of the tenancy agreement, a copy of the notice to end tenancy and a copy of the returned cheque.

The landlord's agent stated the the landlord has recently passed away. However, as the landlord's agent they seek to recover unpaid rent in the amount of \$4,840.00.

The tenants stated that they had an agreement with the landlord and that they were not required to pay any rent for October, 2013.

The landlord's agent denied there was no such agreement with the landlord.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

I prefer the evidence of the landlord's agent over the tenants because if the landlord had told the tenants that they were not required to pay rent for October 2013, I find it would be highly unlikely that the landlord would cash a rent cheque for that month. Rather I find it is highly likely that a notice to end tenancy would be issued as a result of the tenants' failure to pay rent as their cheque was returned for insufficient fund. It appears that the tenants are merely attempting to take advantage of the situation, since the landlord has recently passed away.

I find that the landlord's agent has established a total monetary claim of **\$4,890.00** comprised of unpaid rent owed up to and including November 2013 and the \$50.00 fee paid by the landlord for this application.

I order that the landlord's agent retain the security deposit of **\$850.00** and the pet damage deposit of **\$850.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$3,190.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy. The tenants have vacated the rental unit and an order of possession is no longer required.

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 12, 2013

Residential Tenancy Branch

