



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an order of Possession for unpaid rent and a Monetary Order for unpaid rent; and, damage or loss under the Act, regulations or tenancy agreement. The tenants did not appear at the hearing. The landlord submitted registered mail receipts, including tracking numbers, as proof the hearing documents were sent to each tenant at the rental unit on October 18, 2013. Both packages were returned as unclaimed. The landlord confirmed that the tenants were residing at the rental unit at the time of mailing as the tenants were seen moving out on October 28 and 29, 2013.

Based upon the landlord's submissions, I find the tenants have likely vacated or abandoned the rental unit and, as such, possession of the unit has already reverted back to the landlord and an Order of Possession is no longer necessary.

The landlord requested the application be amended to authorize the landlord to retain the security deposit in partial satisfaction of the unpaid rent. I found this request non-prejudicial to the tenants as it reduces the Monetary Order. I have amended the application accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to recover unpaid rent and other damages or loss as claimed?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced April 2012 and the tenants paid a security deposit of \$415.00. The tenancy agreement provides that the tenants would pay rent of \$830.00 on the 1st day of every month and rent included "cablevision". The tenancy was for a fixed term of

one-year. The tenancy agreement does not indicate the tenants would have to vacate the rental unit at the end of the fixed term but that the parties would “sign another 1 year lease”. I was not provided evidence to suggest another 1 year lease was signed.

The landlord submitted that the tenants wanted TV channels and services not included in the basic cablevision package. Starting April 1, 2013 the tenant began paying \$860.00 for “rent and TV pak”.

The tenants did not pay rent for the months of September 2013 and October 2013 and on October 10, 2013 the landlord personally served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates rent of \$1,720.00 was outstanding as of October 1, 2013 and has a stated effective date of October 31, 2013.

The landlord testified that after serving the 10 Day Notice the tenants did not pay the outstanding rent. Nor, did the tenants file an Application for Dispute Resolution to dispute the Notice.

In filing this Application for Dispute Resolution the landlord requested compensation for unpaid and/or loss of rent for the months of September through November 2013. As the landlord had not incurred a loss of rent for the month of November 2013 as of the date of the hearing I found the claim for such was pre-mature and dismissed that portion of the monetary claim with leave to reapply.

Documentary evidence provided to me included copies of: the tenancy agreement; the 10 Day Notice; rent receipts; and, various correspondence between the parties.

Analysis

The Act provides that if the tenants are not required to vacate the rental unit at the end of the fixed term and the parties have not entered into a new tenancy agreement, the parties are deemed to have renewed the tenancy agreement on a month-to-month basis with the same terms. In the absence of a new tenancy agreement, I find the tenancy continued on a month-to-month basis, on the same terms, upon expiration of the fixed term.

Under the Act, a tenant must pay rent when due even if the landlord has violated the Act, regulations or tenancy agreement; unless, the tenant has a legal right to withhold rent. I was not provided any submissions to suggest the tenants had a legal right to withhold rent.

The Residential Tenancy Regulations also provide that a landlord may charge a fee for services or facilities that are not required to be provided under the tenancy agreement. I accept the evidence before me that the tenants requested and agreed to pay for additional TV channels and services not included in the basic cablevision included in their rent.

Upon review of the tenancy agreement; rent receipts, and upon consideration of the undisputed testimony provided to me by the landlord, I find the landlord was entitled to receive rent and the agreed upon fee for additional TV services for the months of September 2013 and October 2013. Therefore, I grant the landlord's request to recover \$1,720.00 from the tenants for those two months.

I award the landlord the filing fee paid for this Application for Dispute Resolution. I also authorize the landlord to retain the security deposit in partial satisfaction of the rent owed by the tenants.

In light of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent and TV pack: September and October 2013	\$ 1,720.00
Plus: filing fee	50.00
Less: security deposit	<u>(415.00)</u>
Monetary Order	\$ 1,355.00

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$1,355.00. The landlord's claim for loss of rent for the month of November 2013 was dismissed with leave.

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: November 28, 2013

