



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 530/536 Herald St Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNDC

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent, damage to the rental unit, an administrative fee, and the RTB filing fee.

The landlords attended the hearing and gave affirmed evidence. The tenant did not attend. The landlords gave evidence that they served the tenant with the Notice of a Dispute Resolution Hearing and Landlord's Application for Dispute Resolution by personal service on January 13, 2014. I accept the evidence of the landlords and find that the tenant was properly served.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties entered into a tenancy agreement for a fixed-term tenancy starting July 1, 2013 and ending June 30, 2014. The tenant was obligated to pay \$1,425.00 in rent in advance payable on the first day of the month. The tenant also paid a security deposit of \$725.00.

The landlords gave evidence that they served a Notice to End Tenancy for Unpaid Rent (the "Notice") on the tenant by personal service on November 12, 2013. The Notice indicated that the tenant owed \$1,425.00 in unpaid rent that was due November 1, 2013. The landlord's evidence was that the tenant did not make any payments within five days of receiving the Notice. The tenant made one further payment of \$420.00 on December 6, 2013.

The tenant vacated the rental unit on January 13, 2014. The property manager inspected the unit and found damage to the walls, including scrapes, dents, and holes, that necessitated repainting. The tenant had also apparently urinated on the concrete flooring and the flooring has required extensive cleaning and may require resealing to remove the smell. The landlord gave evidence that a cleaning service has spent between 15 and 20 hours so far on the unit, and the cleaning service charges \$20 per hour. There was also rotten food, including meat products, in the refrigerator and the landlord has not been able to sufficiently clean the refrigerator to render it useable.

The landlord was unable to immediately rent out the rental unit because it required extensive cleaning and some painting. The landlord anticipates the rental unit will be ready to be re-rented for February 1, 2014.

The landlord also gave evidence that the tenant owes an NSF charge of \$25.00 for a returned cheque.

Analysis

I find that the tenant was served with the Notice on November 12, 2013 and failed to pay the rent owing within five days of receiving the Notice. However, the landlord no longer requires an order of possession because the tenant has moved out. The claim for an order of possession is dismissed.

I accept the landlord's undisputed evidence that the tenant did not pay rent for November and December 2013 or for January 2014 except for a partial payment of \$420.00. I therefore grant the landlord a monetary order for \$3,855.00 for unpaid rent. The landlord is also entitled to recoup the NSF charge of \$25.00 and the RTB filing fee of \$50.00.

The total amount due the landlord from the tenant is \$3,930.00. The landlord is entitled to retain the security deposit of \$725.00 in partial satisfaction of the claim. I therefore grant the landlord an order under Section 67 for the balance due of \$3,205.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

In their application, the landlords claimed the security deposit to at least partially offset the cost of repairing damage to the rental unit. At the time of the hearing, I anticipated granting this claim. However, I have now realized that I cannot make an award for damage to the rental unit at this time. Administrative fairness demands that the tenant have knowledge of the damage claim being made. The landlord's application, made before the tenant moved out, says only "We would like to keep security deposit and any

compensation for damage to the unit. Tenant's unit has not been properly cared for since move & there is a very foul odour coming from the unit." I find that this does not adequately give the tenant notice of the damage claim. The landlord's claim for a monetary order for damage to the rental unit is therefore dismissed with leave to reapply.

Conclusion

I grant the landlord a monetary order of \$3,205.00. The landlord is also entitled to retain 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*.

Dated: January 23, 2014

Residential Tenancy Branch