



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlords to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*, served in person to each tenant on January 22, 2014.

Council for the landlords appeared at the hearing on behalf of the landlords and was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

At the outset of the hearing Council for the landlords advised that the tenants are no longer residing in the rental unit, and therefore, the landlords withdraw the application for an Order of Possession.

Issues(s) to be Decided

- Are the landlords entitled to a Monetary Order to recover rent owed?
- Are the landlords entitled to keep the security deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Council for the landlords states that this fixed term tenancy started on June 15, 2013 for one year. Rent for this unit is \$1,350.00 per month and is due on the first of each month. The tenants paid a security deposit of \$675.00 on June 15, 2013. The tenants vacated the rental unit on or about February 08, 2014.

Council for the landlords states that the tenants failed to pay rent owed for December, 2013 and January, 2014 leaving an unpaid balance of \$2,700.00. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent on January 06, 2014. This was posted to the door of the tenants' rental unit. The Notice indicated that the tenants owed rent of \$2,750.00.00. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on January 06, 2014. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants have failed to pay rent for February, 2014. The total amount of unpaid rent is now \$4,050.00.

Council for the landlords states that there is no further monetary claim for money owed or compensation for damage or loss at this time. Council for the landlords states that the landlords had applied for \$4,775.00 but had inadvertently added the security deposit to the total of rent owed rather than deducting it. The landlords therefore amend their claim accordingly.

The landlords have applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlords seek a Monetary Order for the balance owing of 3,375.00 and the \$50.00 filing fee.

Council for the landlords states that the tenants have not cleaned the unit and have left garbage at the unit. This will require some extra work by the landlords to prepare the unit for re-rental for March 01, 2014. The landlords are confident that they will be able to get the unit re-rented but if they cannot do so then they may pursue the tenants for loss of rental income as this was a fixed term tenancy.

Analysis

The tenants did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I am satisfied that there is outstanding rent for December, 2013 and January and February, 2014. Section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Consequently, it is my decision that the landlords have established a claim for unpaid rent and are entitled to recover rent arrears of **\$4,050.00**.

I order the landlords, pursuant to s. 38(4)(b) of the *Act*, to keep the tenants' security deposit of **\$675.00** in partial payment of the rent arrears.

As the landlords have been successful in this matter, the landlords are also entitled to recover the **\$50.00** filing fee for this proceeding.

The landlords will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$4,050.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$675.00)
Total amount due to the landlords	\$3,425.00

Conclusion

I HEREBY FIND in favor of the landlords amended monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$3,425.00**. The Order must be served on the Respondents and is enforceable through the Provincial Court 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: February 13, 2014

Residential Tenancy Branch

