



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, OPC, OPB, CNR, FF, OLC

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant also filed an application seeking to have a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities set aside, and an order to have the landlord comply with the Act. Both parties participated in the conference call hearing. Both parties gave affirmed evidence. Both parties gave affirmed evidence.

Issues to be Decided

Is either party entitled to any of the above under the Act, regulation or tenancy agreement?

Preliminary Matter: Service of Applicants' Evidence

The Residential Tenancy Rules of Procedure, Rule 3.1, requires that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding. I note that the Landlord and Tenant Fact Sheet contained in the hearing package makes it clear that "*copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible..*" The landlord advised that she had not served the tenant any of her documentary evidence.

Given the above, I declined to accept or consider any evidence that was not properly served on the other party. However, verbal testimony from both parties was considered.

Background and Evidence

The landlord gave the following testimony:

The tenancy began on or about April 1, 2013 for a fixed term of one year at which point the tenancy would continue as a month to month agreement. Rent in the amount of \$875.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$437.50 as well as a pet deposit of \$437.50. The tenant failed to pay rent in the month of April and on April 4, 2014 the landlord served the tenant with a notice to end tenancy. The landlord stated that on April 2, 2014 the tenant provided a notice that they would vacate by April 15, 2014 or whenever it was that she was able to arrange for a moving truck. The landlord stated the tenant moved out on April 21, 2014. The landlord stated that the tenant did not pay the rent for April. The landlord stated that she was unable to rent the unit for May 1, 2014 due to the poor condition the tenant left the unit in and due to the short notice. The landlord is seeking the unpaid rent for April and loss of revenue for May. The landlord stated that she is seeking unpaid utilities in the amount of \$48.12.

The tenant gave the following testimony:

The tenant stated that since the landlord collected pet and security deposits to the equivalent of one months' rent she should not have to pay the month of April as it has already been paid. The tenant stated that she believes that the landlord should only receive a pro-rated amount for April since she moved out on the 21st of the month.

Analysis

Both parties indicated the tenant vacated on April 21, 2014. The landlord indicated that an order of possession is no longer required; accordingly I dismiss that portion of the landlords claim and the tenants request to have the notice set aside and for an order to have the landlord comply with the Act.

I accept the landlord's testimony and I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice. It was clear to me during the hearing the tenant did not understand her obligations and responsibilities under the Act and tenancy agreement. The tenant acknowledged that she did not make any payments for the month of April. The tenant also acknowledged that she gave late notice. Based on the tenants own testimony I find that the landlord is entitled to the unpaid rent for April and the loss of revenue for May in the total amount of \$1750.00. The landlord has not provided

sufficient evidence of the exact amount of the utilities cost and in the absence of any supporting documentation I dismiss that portion of the landlords claim.

As for the monetary order, I find that the landlord has established a claim for \$1750.00. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$437.50 security deposit and the \$437.50 pet deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$925.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$925.00. The landlord may retain the security and pet deposits.

The tenants' application is dismissed in its entirety.

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: May 26, 2014

Residential Tenancy Branch

