



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an Order of Possession and a monetary order for unpaid rent or utilities; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and for a monetary order for money owed or compensation for damage or loss under the *Act* regulation or tenancy agreement.

Both landlords attended the hearing and each gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents personally on May 28, 2014, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any affirmed testimony, and the only participants who joined the call were the landlords. One of the landlords testified that the tenant was served on that date and in that manner, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

During the course of the hearing the landlords advised that the tenant moved out of the rental unit sometime before the end of May, 2014 and the application for an Order of Possession is withdrawn.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Have the landlords established a monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

- Should the landlords be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The first landlord testified that the landlords purchased the rental unit on August 16, 2013 and the tenant was already a tenant in that unit. No written tenancy agreement has been provided to the landlords, however it is an agreement on a month-to-month basis. Rent in the amount of \$1,250.00 per month was payable in advance on the first day of each month. The landlord does not believe any security deposit or pet damage deposit was paid.

The tenant was having some financial difficulty and the landlords accepted \$1,100.00 for rent for the months of November and December, 2013 and agreed to forgive the balance. Then in January, 2014 the landlords reduced rent from \$1,250.00 to \$1,200.00 per month. The tenant fell into arrears and made partial payments from time-to-time, and the landlords agreed that the tenant could work off some of the arrears by doing work for the landlords.

On May 1, 2014 the landlord attended at the rental unit to collect rent, and the tenant said he didn't have the money. The landlord waited until May 13, 2014 for payment, but did not receive any. The landlord personally served the tenant on May 13, 2014 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of the first page of the 2-page form has been provided, and it is dated May 13, 2014 and contains an expected date of vacancy of May 24, 2014. The notice states that the tenant failed to pay rent in the amount of \$2,250.00 that was due on May 1, 2014.

The tenant moved out of the rental unit shortly after being served with the hearing package and has not provided the landlords with a forwarding address.

The other landlord testified that the notice to end tenancy originally showed that \$3,000.00 was due on May 1, 2014 but the parties were all together when the document was served, and it was agreed that the landlords would reduce rent again by \$750.00 for work that the tenant did for the landlords even though the landlords did not believe that the tenant had worked that much. However, the form was changed by crossing out \$3,000.00 and writing above it \$2,250.00 and the landlord pointed out that all parties initialed the document acknowledging the amount of rental arrears.

The landlords claim \$2,250.00 as against the tenant.

Analysis

In this case the landlords were not able to provide me with specific amounts paid by the tenant or the dates, however, I am satisfied, based on the initials of the parties on the notice to end tenancy that the tenant was given the benefit of the doubt by the landlords and the tenant acknowledged in writing to owing \$2,250.00.

With respect to the security deposit, I am not satisfied that the landlords did or did not receive a security deposit or a pet damage deposit, or if any amounts were provided on the statement of adjustments when the rental unit was purchased. Therefore, I dismiss that portion of the landlords' application with leave to reapply. The *Act* requires that the landlord return the security deposit in full or apply for dispute resolution claiming against it within 15 days of the later of the date the tenancy ends or the date the landlords receive the tenant's forwarding address in writing. The landlord testified that the tenant has not provided a forwarding address, and I order the landlords to deal with the security deposit and/or pet damage deposit in accordance with the *Act*.

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, the landlords' application for an Order of Possession is hereby dismissed as withdrawn.

The landlords' application for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit is hereby dismissed with leave to reapply, and I order the landlords to comply with Section 38 of the *Residential Tenancy Act*.

I hereby grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,300.00.

This order is final and binding and may be enforced.

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: July 16, 2014

Residential Tenancy Branch

