



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an order of possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company attended the hearing, however despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on June 16, 2014, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord's agent. The landlord's agent testified that the tenant was served on that date and in that manner and provided a receipt from Canada Post and a tracking number for the registered mail, 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.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord 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 landlord's agent testified that this fixed term tenancy began on April 15, 2012, expired on April 30, 2013 and then reverted to a month-to-month tenancy. Rent in the amount of \$700.00 per month was payable under the tenancy agreement, a copy of which has been provided, on the 1st day of each month. The tenancy agreement shows a different landlord, and the landlord's agent testified that the landlord named herein purchased the rental unit in May, 2014. A Notice of Rent Increase has also been provided which is dated January 28, 2013 and states that the rent increases from \$720.00 per month to \$747.00 per month commencing May 1, 2013.

The landlord's agent further testified that the tenant paid a security deposit to the landlord at the outset of the tenancy in the amount of \$360.00 which is still held in trust by the landlord, however the tenancy agreement specifies \$350.00.

The landlord's agent further testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on May 24, 2014 by posting a copy to the door of the rental unit. A copy of the notice has been provided and it is dated May 24, 2014 and contains an expected date of vacancy of June 3, 2014 for unpaid rent in the amount of \$425.00 that was due on May 1, 2014.

The landlord's agent was not able to provide any testimony with respect to how much the tenant paid the landlord for May's rent, and spoke about late fees, but was not able to provide any testimony about late fees being contained in the tenancy agreement or whether or not any late fees were included in the \$425.00 that was written in the notice to end tenancy.

Due to inconsistencies contained in the landlord's records, the landlord's agent withdrew the application for an order of possession.

Analysis

I have reviewed the tenancy agreement and the notice increasing the rent, and I am not satisfied that the landlord, or the previous landlord, has increased the rent in accordance with the *Residential Tenancy Act* or the regulations. The tenancy

agreement specifies rent in the amount of \$700.00 per month, but the notice increasing the rent states that the rent established at the commencement of the tenancy was \$720.00, and it appears from the evidentiary material that the landlord at the time increased the rent to an incorrect amount.

In the circumstances, I am not satisfied that the landlord has established a monetary claim as against the tenant, and the landlord's application is hereby dismissed. The landlord is at liberty to serve the tenant with another notice to end tenancy if rent remains unpaid.

Conclusion

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

The balance of the landlord's application is hereby dismissed.

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: August 07, 2014

Residential Tenancy Branch

