



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding G. LAITINEN ROOFING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for damage to the property; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit and pet damage deposit. The tenants did not appear at the hearing. The landlord testified that he personally served each tenant with the hearing documents at a construction site where they were both working on July 22, 2014 in the presence of a witness. The landlord provided the time of service and the address of the place the tenants were served. I was satisfied the landlord served each tenant with the hearing documents and I continued to hear the landlord without the tenants present.

At the outset of the hearing the landlord submitted that it is unlikely he will collect any monies from the tenants since the tenants are on Income Assistance and work "under the table" for cash. Thus, the landlord reduced his claim to seek authorization to retain the deposits in satisfaction of his losses. I amended the application accordingly and the remainder of the hearing was focused on unpaid rent.

Issue(s) to be Decided

Has the landlord established an entitlement to recover damages or loss equal to or greater than the sum of the deposits? If so, is the landlord authorized to retain the tenants' deposits?

Background and Evidence

The tenancy commenced on January 3, 2014 and the tenants paid a security deposit of \$475.00 and a pet damage deposit of \$150.00. The tenants were required to pay rent of \$950.00 on the 1st day of the month. The tenancy agreement provides that the tenancy was for a fixed term that would expire on March 31, 2014. The tenancy agreement did not require the tenants to vacate the rental unit upon the expiry of the

fixed term; however, the tenancy agreement also indicated that there would be a “lease arrangement for next 12 months”. The landlord explained that it was anticipated at the formation of the tenancy that a 12 month fixed term would be entered into upon expiration of the original term but the parties did not execute another tenancy agreement and the landlord did not want to enter into another 12 month fixed term given the tenants’ repeated late payment of rent.

The landlord submitted that rent was paid late every month and then on May 7, 2014 he served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent. The tenants did not pay the rent, did not file to dispute the 10 Day Notice, and did not vacate the rental unit. The landlord applied for an Order of Possession and Monetary Order for unpaid rent under the Direct Request procedure but the application was unsuccessful given the wording of the tenancy agreement with respect to the dual fixed term provisions. The landlord’s application was dismissed with leave to reapply.

The landlord testified that the tenants remained in possession of the rental unit until June 28, 2014 and never did pay any rent for the months of May or June 2014.

Analysis

Section 44 of the Act provides for ways a tenancy ends. Section 44(3) provides that:

“If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.”

Since the tenants were not required under the term of tenancy to vacate the rental unit on March 31, 2014 and having heard the parties did not enter into another tenancy agreement, I find the tenancy continued on a month-to-month basis starting April 1, 2014. As such, the tenants were obligated under the Act to pay rent when due until such time the tenancy legally ended.

Based upon the above, I find the tenants were required to pay rent for the month of May 2014 and I find the landlord entitled to recover unpaid rent of \$950.00 from the tenants for that month.

Since the landlord holds deposits totalling \$675.00 and has limited his claim to that amount, I award the landlord \$675.00 for unpaid rent. As the landlord has established a

loss equal to or greater to the sum of the deposits due to unpaid rent for May 2014, I found it unnecessary to further consider any other losses suffered by the landlord.

Pursuant to section 72 of the Act, I authorize the landlord to retain the security deposit and pet damage deposit in satisfaction of the amounts owed to the landlord by the tenants.

Conclusion

The landlord has been authorized to retain the tenants' security deposit and pet damage deposit in satisfaction of the amounts owed to the landlord by the tenants.

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: November 20, 2014

Residential Tenancy Branch

