



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was originally dealt with by way of a Direct Request Proceeding (a non-participatory hearing) in response to the Landlords' Application for Direct Request (the "Application"). The Application was made for an Order of Possession and a Monetary Order for unpaid rent on October 8, 2014.

On October 16, 2014 an Interim Decision was made which explained that the Landlords' Application could not be progressed through a non-participatory hearing because the documentary evidence supplied was incomplete. However, it was determined that the required information could be obtained from both parties in a hearing. As a result, the Direct Request Proceedings were adjourned to this participatory hearing.

Both parties were sent the Notice of Hearing letters detailing the date and time of this hearing. However, only the Landlords appeared for the hearing and provided affirmed testimony. There was no appearance by the Tenants during the 36 minute duration of the hearing.

Preliminary Issues

The Landlords explained at the start of the hearing that the Tenants had been evicted from the rental suite on November 12, 2014 through the enforcement of an Order of Possession. The Landlords explained that this Order of Possession was granted through another hearing that took place on October 15, 2014 in response to the Landlords' Application to end the tenancy early (the file number for this hearing appears on the front page of this decision).

The Landlords explained that they now wanted to seek additional costs from the Tenant relating to lost rent, bailiff costs and costs associated with damages to the rental unit. The Landlords provided additional documentary evidence for this hearing in relation to these costs and explained that a copy of this evidence had been taped to the Tenants'

rental unit door. The Landlords also requested to keep the Tenants' security and pet damage deposit (the "deposits") and to recover the filing fee for the cost of making the original Application for Direct Request.

In relation to the above monetary claim requested, I informed the Landlords that I would be unable to deal with a monetary claim for which the Tenants had not been put on sufficient notice for. The Rules of Procedure provided specific instructions on how the **Application is to be amended and served** when an adjustment in the monetary claim is being sought. This cannot be claimed through the submission of additional evidence. In addition, the Act does not allow an amended Application for an increased monetary claim to be served by attaching it to the Respondents' door.

Therefore, I declined to deal with the Landlords' increased monetary claim for the bailiff costs and damages to the rental unit as I find that the Tenants have not been put on sufficient notice of these portions of the claim. I also dismissed the Landlords' claim for an Order of Possession as originally requested, because one had already been issued through a previous hearing and the Tenants have now vacated the rental suite.

However, I did consider the Landlord's claim for unpaid rent, to recover the filing fee for the cost of making the original Application for this hearing, and to keep the Tenants' deposits. The Act allows me to consider these aspects of the Application and I find that it is reasonable to assume that the Tenants would have had sufficiently knowledge of these claims. As a result, I amend the Landlords' Application accordingly, pursuant to Section 64(3) (c) of the Act, to consider these aspects of the Landlords' claim as follows.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid and lost rent?
- Is the Landlord entitled to keep the Tenants' deposits in satisfaction of the Landlords' claim for rent?

Background and Evidence

The Landlords testified that this tenancy started on January 1, 2012 on a month to month basis. Rent was payable to the Landlords in the amount of \$800.00 on the first day of each month. The Tenants paid the Landlords \$400.00 as a security deposit and \$400.00 as a pet damage deposit at the start of the tenancy, which the Landlords still retains as the Tenants have not provided them with a forwarding address.

The Landlord explained that the rent payable to them was being provided by a third party government organization.

The Landlords explained that the Tenants failed to pay partial rent in the amount of \$400.00 for October 1, 2014. As a result, the Tenants were personally served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on October 2, 2014.

The Landlords testified that after the five day time limit the Tenants were provided to pay the outstanding rent, the Tenants made partial payments and by the end of October, 2014, they had made full payment for October, 2014 rent. The Landlords explained that the Tenants were provided with receipts that the payments were being accepted for use and occupancy only.

The Landlords testified that for November, 2014 rent, they only received \$400.00 from the third party government organization. Therefore, this left an outstanding balance of \$400.00 for the remainder of November, 2014 rent.

The Landlords testified that the Tenants left a considerable amount of damage to the rental suite and referred to her photographic evidence in support of her testimony. The Landlords explained that they have still not been able to re-rent the suite because of the damage caused by the Tenants and seek loss of rent for December, 2014.

Analysis

Section 26(1) of the Act requires a Tenant to pay rent when it is due under a tenancy agreement whether or not the Landlord complies with the Act.

Based on the Landlords' oral and written evidence above, I accept the evidence that the Tenants failed to pay rent to the Landlord in the amount of **\$400.00** for November, 2014 rent. I also accept the Landlords' evidence that they have been unable to re-rent out the rental suite because of the damages to the rental unit to date.

At this point in time, I am only prepared to award the Landlords loss of rent for the first two weeks of December, 2014 in the amount of **\$400.00**, as there is still time left for potential re-rental of the suite for the middle of December, 2014.

However, the Landlords are at liberty to make a further claim for loss of rent after December 15, 2014 and provide evidence of how they have mitigated their loss for the subsequent period that they may claim for.

As a result, I award the Landlords a total of **\$800.00** in unpaid and loss of rent. As the Landlords have been successful in this matter, the Landlords are also entitled to recover the **\$50.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlords is **\$850.00**.

As the Landlords already hold the Tenants' **\$800.00** deposits, and no interest is payable on this amount, I order the Landlords to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlords are awarded the outstanding balance of **\$50.00**.

Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$50.00**. This order must be served on the Tenants and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

The Landlord's Application for an Order of Possession is dismissed.

The Landlord is at liberty to make an Application to claim any further loss of rent after December 15, 2014 and for the losses claimed and provided in written evidence for this hearing. The Landlord is cautioned that they must be able to prove and satisfy that service of documents on the Tenants can be completed in accordance with the Act before considering making a further Application.

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: December 3, 2014

Residential Tenancy Branch

