



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 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.

The landlord and the tenant both attended the hearing and gave affirmed testimony, and the landlord called 2 witnesses who also gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

At the outset of the hearing the landlord advised that the tenant has moved out of the rental unit and the application for an Order of Possession is withdrawn.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on May 1, 2013 and expired after one year. The tenant moved out about a week ago, but the landlord is not sure when. Rent in the amount of \$1,400.00 per month was payable in advance on the 1st day of each month. The tenant paid the landlord a security deposit, but the landlord is not sure of the amount but approximately \$700.00 about 2 months ago, which is still held in trust by the landlord. A copy of the tenancy agreement has been provided.

The landlord further testified that the tenant has never been on time paying rent. The landlord and family own about 200 rental units and the landlord and his brothers collect rent from each tenant monthly. The tenant has not paid any rent for December, 2014 or for January, 2015 and is currently in arrears \$2,800.00. The landlord or his brother personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 10, 2014. A copy of the notice has been provided and it is dated December 10, 2014 and contains an effective date of vacancy of December 20, 2014 for unpaid rent in the amount of \$1,400.00 that was due on December 1, 2014. The tenant has not paid any rent since the issuance of the notice.

The landlord also testified that he and his brothers always give receipts for rent paid in cash and for rent paid by cheque if the tenants ask. They then write it in a book when they get back to the office.

When asked if the parties had agreed that the security deposit would be considered paid if the tenant cleaned the rental unit at the outset of the tenancy, the landlord yelled at the tenant that the place was clean, and the tenant declined to ask any further questions.

The landlord's first witness is the brother of the landlord. He testified that the tenant owes rent for December, 2014 and January, 2015. The witness keeps a receipt book in his truck for cash payments.

The witness also testified that he served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities personally on the tenant.

He further testified that the tenant has never paid rent on time, and the only fees other than rent that the tenant paid was an arbitration fee.

The landlord's second witness is a property manager for the landlord and has been since February, 2014, but doesn't have much dealing with this rental unit other than bookkeeping, banking and preparing documents. She stated that the landlord or a brother of the landlord provides her with banking money to deposit or the landlord does the deposit and provides the witness with a deposit slip, and the witness enters the information into Simply Accounting. Each deposit slip shows which unit the money is for. When the landlords collect rent, they rarely go alone, sometimes taking along a spouse or another family member.

The witness prepared the documents for this hearing, which includes a copy of the tenancy agreement. The witness testified that the copy she has contains handwritten notations that are very faint, as is the copy provided for this hearing. The markings appear near the length of tenancy portion, the portion showing what is included in the rent, and the security deposit portion.

The witness also testified that the tenant paid a security deposit of \$700.00 at the outset of the tenancy but no pet damage deposit was collected. Further, there is no record of the tenant paying any rent in December, 2014 or January, 2015. The records show that

the landlord has collected late fees from the tenant in the amount of \$50.00 twice that the witness is aware of.

The tenant testified that the landlord was only at the rental unit about twice; it was his brother who attended. At least a dozen times he collected an additional \$50.00 or \$100.00 in late fees leaving a balance of rent due and told the tenant the fee was to cover bank fees.

The tenant further testified that he paid \$1,400.00 on December 22, 2014 to the landlord's brother who said that he'd provide a receipt if and when the tenant paid January's rent. The tenant agrees that the rent was never paid on time, but the landlords always got their money.

The tenant did not pay any rent for January, 2015 and moved out January 15, 2015. The parties had agreed that since the rental unit required a lot of cleaning, the tenant's security deposit would be covered by the tenant completing the cleaning. Then the landlord took half a month's rent out of the rent money for a security deposit and told the tenant that he still owed half a month's rent. He also testified that the landlord had the move-in condition inspection report completed before the tenant arrived.

The tenant agrees that the landlord is owed half a month's rent, and agrees that the security deposit that is still in the landlord's possession covers it.

Analysis

Where a party makes a monetary claim against another, the onus is on the claiming party to prove the claim. The landlord and the first witness testified that the tenant did not pay any rent since the issuance of the notice to end the tenancy. The tenant testified that he gave the landlord's brother \$1,400.00 on December 22, 2014 who said he'd give a receipt when and if the tenant paid January's rent. The landlord testified that all cash payments result in a receipt, but the landlord has not provided copies of any or of a tenant ledger. Where it boils down to one person's word over another, the claim has not been proven, and the landlord's application for \$1,400.00 for December's rent is dismissed.

The tenant testified that the landlord collected late fees from the tenant at least a dozen times of \$50.00 or \$100.00. The landlord denied that any were paid, but the landlord's second witness testified that as far as she could recall the landlord collected late fees of \$50.00 twice. I cannot accept the landlord's testimony when the bookkeeper and witness of the landlord disagreed.

The tenant also testified that the landlord agreed that the security deposit was paid by way of the tenant completing the cleaning required in the rental unit at the outset of the tenancy. The landlord's response to that was the rental units are all clean, but did not dispute the testimony of the tenant that a move-in condition inspection report had already been completed by the landlord and the tenant signed it without participating in

the inspection. He further testified that the landlord then took half a month's rent paid by the tenant for the security deposit, also not disputed by the landlord.

The tenant agrees that half a month's rent is owing to the landlord to the end of January, 2015 and the landlord has the security deposit in that amount. In the circumstances, I am not satisfied that the landlord has established that the tenant owes any more than that. I order the landlord to keep the security deposit in full satisfaction of the landlord's claim for unpaid rent.

With respect to the filing fee, I am satisfied that the landlord has collected more money than the landlord was entitled to in late fees. Nothing in the tenancy agreement permits the landlord to collect any late fees and the landlord's witness believed it to be \$50.00 twice. The tenant believed it to be much more but has not provided a total amount. In the circumstances, I am satisfied that the landlord has recovered the filing fee by charging late fees that he was not entitled to collect.

Conclusion

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

I hereby order the landlord to keep the security deposit in full satisfaction of the balance of the landlord's claim.

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: January 29, 2015

Residential Tenancy Branch

