



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, FF
 MT, CNR, MNSD

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; 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 tenant has applied for more time to dispute a notice to end the tenancy, for an order cancelling a notice to end tenancy for unpaid rent or utilities, and for a monetary order for return of all or part of the pet damage deposit or security deposit.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on December 31, 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. The landlord testified that the documents were served to the tenant on that date and in that manner and has provided a copy of the Canada Post receipt bearing that date and a tracking number and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord also testified that the tenant did not serve the landlord with the Tenant's Application for Dispute Resolution. Since the tenant has not attended the hearing and has not served the landlord with the application, I dismiss the tenant's application in its entirety without leave to reapply.

All evidence and testimony of the landlord has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord advised that the tenant has moved out of the rental unit, the landlord has possession, and the landlord's application for an Order of Possession is withdrawn.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 damage to the unit, site or property?
- 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 month-to-month tenancy began on December 5, 2014 and the landlord's father, who lives next door to the rental unit, has advised the landlord that the tenant moved out in the middle of the night last night.

Rent in the amount of \$1,250.00 per month was payable in advance on the 1st day of each month. The tenant was required to pay a security deposit in the amount of \$625.00 but the landlord has only collected \$400.00, which was paid by the tenant on December 13, 2014 and is still held in trust by the landlord. No pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The landlord further testified that the tenant has not ever paid any rent, and owes for December, 2014 in a pro-rated amount. The landlord served the tenant personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 17, 2014. The landlord has not provided a copy of the notice for this hearing but testified that the notice is dated December 17, 2014, contains an effective date of vacancy of December 27, 2014, and states that the tenant failed to pay rent in the amount of \$1,250.00 that was due on December 5, 2014. The tenant has not paid any rent since the issuance of the notice. The landlord also claims rent for the month of January, 2015 in the amount of \$1,250.00 and an order permitting the landlord to keep the \$400.00 security deposit.

The landlord also testified that the tenant has damaged the door of the rental unit, and is told by his father that further damages exist today. The landlord claims \$200.00 for the damage to the door but has not provided a receipt or an estimate and testified that the door has not yet been repaired.

Analysis

Firstly, I am satisfied in the evidence before me that the tenant has failed to pay any rent for December, 2014 or for January, 2015. I am also satisfied that the amount of rent payable is \$1,250.00 per month due on the 1st day of each month and the landlord is entitled to a pro-rated amount of \$1,048.39 for December, 2014. I also find that the tenant has abandoned the rental unit and the landlord has not yet had an opportunity to

inspect the rental unit, nor is there enough time to re-rent before February 1, 2015 and the landlord is entitled to a month's rent in full for January, 2015.

The *Residential Tenancy Act* states that a tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear. In this case, I find that the landlord has not yet had an opportunity to inspect the rental unit and the landlord's application for damages is premature. The landlord's application for a monetary order for damage to the unit, site or property is dismissed with leave to reapply.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

I hereby order the landlord to keep the \$400.00 security deposit and I grant a monetary order in favour of the landlord for the difference in the amount of \$1,948.39.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

The landlord's application for an Order of Possession is hereby dismissed as withdrawn.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed with leave to reapply.

I hereby order the landlord to keep the \$400.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,948.39.

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: January 22, 2015

Residential Tenancy Branch

