



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Landlord to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on July 25, 2014. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on June 1, 2014 as a month to month tenancy. Rent was \$795.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$375.00 on May 28, 2014.

The Landlord said the Tenant moved out of the rental unit on July 20, 2014 as a result of a 10 Day Notice to End Tenancy for unpaid rent. The Landlord continued to say that they filed an earlier application under the Direct Request process and received an Order of Possession and a Monetary Order for \$795.00. The Landlord said they have been unsuccessful in collecting the money owed and now the Landlord has applied to retain the Tenant's security deposit as partial payment of the unpaid rent and the filing fee.

Analysis

Section 5 of the Act says this Act cannot be avoided by landlords and tenants.

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a tenant may end a period term tenancy not earlier than the 1 month prior to the day in the month the rent is normally paid or with the agreement of the landlord.

The Tenant did not give the Landlord proper notice to end the tenancy and the Tenant does not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the rent of \$795.00 for the month of July, 2014. As the Landlord has already obtained a monetary order for the unpaid rent I cannot issue an additional order for unpaid rent, but I can award the Landlord's requested to retain the Tenant's security deposit as partial settlement for the unpaid rent and the filing fee. I award the Landlord the Tenant's security deposit in the amount of \$375.00 for part of the unpaid rent/monetary Order and to cover the filing fee of \$50.00. I order \$325.00 of the security deposit to be applied to this monetary order leaving \$470.00 still outstanding. The balance of the security deposit of \$50.00 is awarded to the Landlord to cover the cost of the filing fee for this application.

Conclusion

I order the Landlord to retain the Tenant's security deposit of \$375.00 as partial payment of the monetary order and to pay the filing fee for this 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: January 12, 2015

Residential Tenancy Branch

