



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The landlord and the tenants participated in the teleconference hearing.

Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy began on November 1, 2014. Rent in the amount of \$850 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$850. The tenants failed to pay rent on December 1, 2014 and on December 6, 2014 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The parties agree that when the landlord served the tenants with the notice he came into the rental unit and had coffee with the tenants and discussed when they could pay the rent. The landlord stated that on that date he “wanted [the tenants] to pay the rent and stay there.”

The parties agree that on December 17, 2014 the female tenant paid the landlord \$700 toward December rent. The parties also agree that on December 17, 2014 the landlord called the tenants to tell them that their social assistance cheques had come in the mail. The tenants did not pay any rent for January 2015.

In his application filed December 24, 2014 the landlord claimed \$150 for December rent, \$50 for late payment, \$850 for January rent and \$25 for late payment for January 2015. The landlord explained that he did not submit a copy of the tenancy agreement because the tenants did not return it to him.

The tenants stated that when they met with the landlord on December 6, 2014 they understood that if they paid the rent by the agreed-upon time, the notice to end tenancy would be cancelled. The tenants stated that on December 17, 2014, after the landlord called and told the tenants that their cheques had arrived in the mail, the male tenant cashed his cheque and paid the landlord \$150 for the balance of December rent. The male tenant stated that he asked the landlord for a receipt and the landlord refused to give him one. The tenant stated that the landlord claimed that the tenants owed him late fees and fees for gas to drive to the rental unit. The tenants stated that they did not pay January rent because the landlord stole \$150 from them.

Analysis

I have reviewed all evidence and I find as follows.

In regard to the notice to end tenancy, I find that the landlord agreed to waive the notice if the tenants paid the full rent later in the month. The landlord stated in the hearing that he wanted the tenants to pay the rent and stay in the rental unit. I find it is more likely than not that the male tenant did pay the landlord the balance of \$150 on December 17, 2014. The landlord confirmed that he called the tenants on that date to tell them their cheques had arrived, and the landlord knew that the tenants intended to use the cheques to pay the balance of the rent. The landlord did not submit a copy of the notice to end tenancy in his evidence, and I therefore cannot verify what amount of rent the landlord claimed was owing. The landlord claimed for a late fee of \$50, which is contrary to the Act. I therefore find that the tenants did pay the full rent and the notice to end tenancy was therefore waived.

The tenants acknowledged that they did not pay rent for January 2015. I therefore grant the landlord a monetary order for \$850, the amount of rent owing for January 2015.

As the landlord's application was only partially successful, I find that he is not entitled to recovery of the filing fee for the cost of his application.

Conclusion

The landlord's application for an order of possession is dismissed. The tenancy continues until such time as it ends in accordance with the Act.

I grant the landlord an order under section 67 for the amount due of \$850. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 20, 2015

Residential Tenancy Branch

