



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MND, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on February 17, 2015.

The Landlord applied for an Order of Possession for unpaid rent and because the Tenant had breached an agreement with the Landlord. The Landlord also applied for a Monetary Order for unpaid rent, damage to the rental unit, and to recover the filing fee.

Preliminary Issues

The Landlord appeared for the hearing with his wife who both provided affirmed testimony. The Landlord also provided a copy of the notice to end tenancy into written evidence prior to the hearing.

There was no appearance for the Tenants during the ten minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents to the Tenants for this hearing.

The Landlord and his wife testified that a copy of the Landlord’s Application and the Notice of Hearing documents for this hearing were personally served to the Tenants on February 19, 2015. In the absence of any evidence from the Tenants to dispute this, I accept the oral evidence that the Tenants were served with the required documents for this hearing in accordance with Section 89(1) (a) of the *Residential Tenancy Act* (the “Act”).

At the onset of the hearing, the Landlord explained that the Tenants had moved out of the rental suite and therefore he was no longer in need of an Order of Possession. As a result, I dismissed the Landlord’s Application for an Order of Possession. The Landlord also explained that he wanted to keep the Tenant’s security deposit but had not elected

to claim for this because the tenancy had not ended at the time he made his Application.

The Landlord was informed that he can still make an Application to keep the Tenants' security deposit in partial satisfaction of his monetary claim for unpaid rent, which he elected to do. As a result, pursuant to my authority under Section 64(3) (c) of the Act, I amended the Landlord's Application to include his request to keep the Tenants' security deposit.

Issue(s) to be Decided

- Is the Landlord entitled to the February 2015 unpaid rent claimed?
- Is the Landlord entitled to keep all of the Tenants' security deposit in partial satisfaction of the Landlord's claim for unpaid rent?
- Is the Landlord entitled to a Monetary Order for damage to the rental suite?

Background and Evidence

The Landlord testified that this tenancy began on November 30, 2014 on a month to month basis. Monthly rent was payable by the Tenants in the amount of \$800.00 due on the first day of each month. By December 16, 2015 the Tenants had paid a \$400.00 security deposit which the Landlord still retains.

The Landlord testified that the Tenants failed to pay rent on February 1, 2015. As a result, the Landlord personally served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on February 2, 2015.

The Notice was provided as evidence and shows a vacancy date of February 14, 2015 due to \$800.00 which was payable on February 1, 2015. The Landlord testified that the rent for February 2015 is still outstanding and he now seeks a Monetary Order for this amount.

When the Landlord was asked about his claim for damage to the rental suite, the Landlord testified that the Tenants' pets had caused significant damage to the rental suite. However, the Landlord provided no supporting evidence of his claim for damages and did not disclose sufficient details of this damage claim on his Application.

Analysis

Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement. Having examined the Notice, I find that the contents complied with the requirements of Section 52 of the Act. I also accept that the Tenants were personally served with Notice on February 2, 2015 and have since moved out of the rental suite.

I have considered the Landlord's undisputed oral testimony along with the undisputed Notice and I accept that the Tenants failed to pay rent for February 2015 in the amount of **\$800.00**. Therefore, the Landlord is entitled to a Monetary Order for unpaid rent.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenants the **\$50.00** filing fee for the cost of the Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$850.00**.

As the Landlord already holds **\$400.00** in the Tenants' security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded **\$450.00**.

The Residential Tenancy Branch Rules of Procedure require applicants to provide a detailed calculation of any monetary claim being made against the respondent. Therefore, in relation to the Landlord's claim for damage to the rental suite, I find that the Landlord has failed to put the Tenants on proper notice for this portion of the Application. When a party makes an Application, they must provide sufficient information to put the respondent on notice of the claim being made against them; this then gives the respondent an opportunity to know of the case against them and a chance to respond accordingly.

In this case, the Landlord's Application only discloses a monetary claim of \$800.00 which relates to unpaid rent only. Therefore, I dismiss the Landlord's Application for damage to the rental suite, but provide leave to re-apply.

Conclusion

The Tenants have vacated the rental suite. Therefore, the Landlord's Application for an Order of Possession is dismissed.

The Tenants have breached the Act by not paying rent under this tenancy. Therefore, the Landlord is allowed to keep the Tenants' security deposit and is issued with a Monetary Order for the remaining balance of **\$450.00**. This order must be served on the

Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenants fail to make payment. Copies of the order are attached to the Landlord's copy of this decision.

The Landlord's Application for damages to the rental suite is dismissed with leave to re-apply.

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: March 12, 2015

Residential Tenancy Branch

