



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant

At the outset of the hearing the parties confirmed the tenant vacated the rental unit and has returned keys to the landlord. As such, an order of possession is no longer required by the landlord. I amend the landlord's Application for Dispute Resolution to exclude the matter of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began in March 2014 as a month to month tenancy for the monthly rent of \$1,400.00 due on the 1st of each month with a security deposit of \$700.00 paid.

The landlord submits that the tenant has failed to pay rent for the months of March and April 2015.

The landlord had submitted into evidence the following relevant documents:

- A copy of a 1 Month Notice to End Tenancy for Cause issued on February 26, 2015 with an effective vacancy date of March 31, 2015 citing the tenant has been repeatedly late paying rent and the tenant or persons allowed on the property by the tenant have put the landlord's property at significant risk; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on March 2, 2015 with an effective date of March 12, 2015 due to unpaid rent in the amount of \$1,400.00.

The tenant testified that he had not paid rent for the month of March 2015 and that he moved out of the rental unit and returned his keys to the landlord on March 15, 2015 by leaving them where he left his rent payments during the tenancy. He stated that he figured the landlord could retain his security deposit for the 15 days he stayed in the unit.

The landlord could not confirm the specific date that the tenant left the keys where he found them because he had been out of town for a period of time. However, the landlord testified that he had received the keys within the month of March 2015.

Analysis

Based on the testimony of both parties I accept that the tenant failed to pay rent for the month of March 2015 and as a result the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent.

I also accept that the tenant vacated the rental unit within the month of March 2015. As the landlord cannot provide any evidence or testimony to the contrary I accept the tenant's testimony that he returned the keys on March 15, 2015 to the location where he left his rent but not directly to the landlord. Allowing 3 days, I find the landlord is deemed to have received the keys by March 18, 2015, effectively ending the tenancy.

Section 26 of the *Act* states that 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 the right under this *Act* to deduct all or a portion of the rent.

As the tenant has provided no evidence or testimony to confirm that he had authority under the *Act* to withhold any amount of rent from the landlord I find that he cannot unilaterally decide that the landlord could keep the security deposit to satisfy the full rent for the month of March 2015. I also note that despite leaving the rental unit by the 15th the tenant still owes the landlord for the entire month's rent.

In regard to the landlord's claim for rent for the month of April 2015, I find that since the tenant returned possession of the rental unit within the month of March 2015, ending the tenancy, the landlord cannot claim rent for the month of April. I dismiss this portion of the landlord's claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,425.00** comprised of \$1,400.00 rent owed and \$25.00 of the \$50.00 fee paid by the landlord for this application, as the landlord was only partially successful in his claim.

I order the landlord may deduct the security deposit and interest held in the amount of \$700.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$725.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: April 21, 2015

Residential Tenancy Branch

