



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Evangel Family Rental Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for cause, for a monetary order for unpaid rent or utilities, 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.

An agent for the landlord society attended the hearing and gave affirmed testimony. However, despite being personally served with the Landlord's Application for Dispute Resolution and notice of this hearing on March 12, 2015, 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's agent. The landlord's agent testified that he served the tenant with the hearing package on that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing, the landlord's agent advised that the tenant has moved out of the rental unit and the landlord's application for an Order of Possession is withdrawn.

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

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this tenancy agreement commenced as a 1 year fixed term on January 1, 2014, after which it reverted to a month-to-month tenancy. The tenant moved out of the rental unit on April 9, 2015 without notifying the landlord.

Rent in the amount of \$759.00 per month was originally payable under the tenancy agreement, and was increased to \$767.00 after the first year. The tenant was having financial difficulty and the landlord agreed to reduce rent to \$510.00 per month commencing in March, 2015, but did not put that in writing. A copy of the tenancy agreement has not been provided.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$380.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The tenant fell into arrears of rent, and had been consistently late paying, and the landlord issued a 1 Month Notice to End Tenancy for Cause. A copy of the notice has been provided and it is dated January 28, 2015 and contains an effective date of vacancy of February 28, 2015. One of the reasons for issuing the notice is: Tenant is repeatedly late paying rent. The landlord did not serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but testified that the tenant is in arrears of rent the sum of \$1,779.00, being \$759.00 for December, 2014, \$510.00 for March, 2015 and \$510.00 for April, 2015. The landlord seeks a monetary order for that amount as well as \$50.00 for recovery of the filing fee, and an order permitting the landlord to keep the security deposit in partial satisfaction of that claim.

The tenant has not provided the landlord with a forwarding address in writing.

The landlord has also provided a Monetary Order Worksheet claiming \$1,400.00, being \$380.00 as an estimate for repainting the rental unit, \$510.00 for March rent and \$510.00 for April rent, however unpaid rent for December, 2014 is not included. The Landlord's Application for Dispute Resolution also claims \$1,400.00.

Analysis

I have reviewed the material provided by the landlord and I question why the Monetary Order Worksheet is not consistent with the testimony of the landlord's agent. A party is required to put another party on notice of what applications are intended, and I am not satisfied that the tenant has been put on notice respecting December's rent. Further, the landlord's agent provided no information or testimony with respect to re-painting the

rental unit. In the circumstances, I am satisfied that the landlord is entitled to a monetary order in the amount of \$510.00 for March rent.

The *Residential Tenancy Act* states that a party who makes a claim must do whatever is reasonable to mitigate any loss suffered. In this case, the landlord's agent did not provide any testimony or evidence relating to the re-rental of the unit. Therefore, I find that the landlord is entitled to half the month of April, or \$255.00.

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

I order the landlord to keep the \$380.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order for the difference in the amount of \$435.00.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed as withdrawn.

I hereby order the landlord to keep the \$380.00 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 \$435.00.

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: April 15, 2015

Residential Tenancy Branch

