



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, 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 and 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 tenants for the cost of the application.

The landlord attended the hearing, however was represented by an agent who gave affirmed testimony. One of the tenants also attended and represented the other named tenant.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on November 1, 2014 and the tenants still reside in the rental unit. Rent in the amount of \$1,500.00 per month is payable in advance on the 1st day of each month, and the tenants are currently in arrears the sum of \$3,400.00. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A written tenancy agreement exists, however a copy has not been provided for this hearing.

The landlord's agent further testified that the tenants have been continuously in arrears of rent since January, 2015. The tenants paid \$1,000.00 in January, \$900.00 in February, \$1,100.00 in March and have paid no rent for April or May, 2015.

The landlord caused the tenants to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 12, 2015. A copy of the notice has not been provided for this hearing, however the landlord's agent testified that the notice is dated March 12, 2015 with an effective date of vacancy of March 22, 2015 for \$3,000.00 of unpaid rent that was due on March 21, 2015. The landlord's agent believes a copy was provided for this hearing, however no evidence has been received from the landlord.

The tenants generally pay rent in cash but the landlord does not issue receipts; if the tenants wanted a receipt, they should provide one for the landlord to sign.

Analysis

The landlord has provided no evidence for this hearing. Although I have no reason to believe that the landlord's agent has fabricated that testimony, I find that the landlord expected that the Residential Tenancy Branch would make a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and place the copy in the file, however, it is clear that didn't happen. It's up to the landlord to make a copy and provide it as evidence to the Residential Tenancy Branch and to the tenants.

The landlord's agent testified that the notice stated that the tenants failed to pay rent in the amount of \$3,000.00 that was due on March 21, 2015 and it was served on March 12, 2015. She also testified that the tenants paid \$1,000.00 in January, \$900.00 in February and \$1,100.00 in March. If rent is \$1,500.00 per month, the total expected for that 3 month period is \$4,500.00. If the tenants paid \$3,000.00, that would leave a balance of \$1,500.00, not \$3,000.00 as stated in the notice.

The landlord's agent also testified that the tenants are in arrears the sum of \$3,400.00 for the months of January to May. If rent is \$1,500.00 per month and the landlord received the payments that the landlord's agent testified were made, the landlord would be owed \$4,500.00, not \$3,400.00 as testified by the landlord's agent.

In the circumstances, I cannot find that the landlord has established any entitlement to the orders sought, and I advised the parties at the hearing, without the necessity of hearing from the tenant, that the landlord's application is hereby dismissed in its entirety.

The *Residential Tenancy Act* states that a landlord must give a tenant a receipt for rent paid in cash. The onus is on the landlord to provide receipts, not on the tenants to request them or provide any for the landlord to sign. In this case, it's clear that the landlord has not done so, and I order the landlord to issue receipts for all payments made by the tenants in cash.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety.

I hereby order the landlord to provide the tenants with receipts for all payments received by the tenants in cash.

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: May 27, 2015

Residential Tenancy Branch

