



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for Cause; for a Monetary Order for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The male tenant and the landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

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At the outset of the hearing the parties advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on September 01, 2014 for a fixed term due to end on August 31, 2015. Rent for this unit was \$1,600.00 per month due on the 1st of each month in advance. The tenants paid a security deposit of \$800.00 on September 01, 2014.

The landlord testified that the tenants were repeatedly late paying rent and failed to pay any rent for March, April and May, 2015. The landlord served the tenants with a One Month Notice to End Tenancy (the Notice) for repeated late payments of rent. The Notice was served upon the tenants on April 03, 2015 by posting it to their door. The Notice had an effective date of May 09, 2015. The landlord testified that the tenants did not provide vacant possession of the rental unit until May 10, 2014 and no rent was paid for May.

The landlord testified that the tenants left damage in the rental unit. The carpets were left badly stained, there were holes and dents in the walls, the doors had been taken down and damaged and there were cracks left in the bathroom floor tiles. The landlord testified that she could not start to advertise the unit for re-rental due to this damage. The tenant contacted her insurance company and they have now been out to assess the damage and last week the insurance company gave the landlord the approval to go ahead with the repairs. The landlord testified that as the repairs need to be organised then she is unlikely to be able to rent the unit for June and therefore seeks a loss of rent for June of \$1,600.00. The landlord testified that her insurance company do not make payments for lost rent.

The tenant agreed that he owes rent for March, April and May. The tenant disputed the landlord's claim for a loss of rent for June as the damages could not have been that bad to prevent the landlord re-renting the unit. The tenant agreed that there was some damage to the walls which the tenant had filled and primed but not painted. The tenant testified he had left a can of paint in the unit. The tenant also agreed that the carpet was

left stained. The tenant gave the landlord permission at the hearing to keep the security deposit of \$800.00 for damage to the unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties attending. Section 26 of the *Act* states:

26. 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 a right under this Act to deduct all or a portion of the rent.

The tenant attending agreed that rent is owed for March, April and May, 2015. I therefore uphold the landlord's claim to recover the amount of **\$4,800.00**.

With regard to the landlord's claim for a loss of rent for June, 2015; the tenant agreed that there was some damage to the walls and the carpet at the end of the tenancy. The tenant disputed the landlord's claim to recover a loss of rent for June. The landlord testified that she was unable to rent the unit as she was waiting for her insurance company's approval to do the repair work. I have considered both arguments in this matter and find that as we are still close to the start of the month of June and the landlord has had the approval of her insurance company for the past week to start the repairs, that the repairs may be completed in a timely manner to enable the landlord to get the unit advertised and re-rented. Consequently, as it is still possible to re-rent the unit for half a month in June I have limited the landlord's claim to half a month's rent of **\$800.00**.

If the landlord is unable to re-rent the unit for the remainder of the term of the tenancy after attempts have been made to advertise and re-rent the unit then the landlord is at liberty to reapply for a loss of rent up to the legal end of the tenancy of August 31, 2015.

The landlord must make every attempt to re-rent the unit in order to mitigate the loss pursuant to s. 7(2) of the *Act*.

As the landlord's claim has merit I find the landlord is entitled to recover the filing fee of **\$100.00** from the tenants pursuant to s. 72(1) of the *Act*.

I will note here that the tenant attending the hearing has given the landlord permission to keep the security deposit of \$800.00 towards damage caused in the unit to the carpets and walls.

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$5,700.00**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

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: June 02, 2015

Residential Tenancy Branch

