



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNSD, 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 unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; 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 female tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant testified that she did not send her evidence package to the landlord until a few days before the hearing. The landlord testified that she had not received evidence from the tenant. I have not considered the tenants' documentary evidence pursuant to rule 3.11 as I find it was not submitted as soon as reasonable possible and the tenants' unreasonable delayed serving and submitting their evidence in accordance with rule 3.15 of the rules of procedure. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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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 damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?
- 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 April 15, 2015 for a fixed term tenancy of three months until July 31, 2015. The tenants were allowed to take possession of the rental unit on April 07, 2015. Rent for this unit was \$1,125.00 per month and was due on the last day of each month in advance. The tenants paid a security deposit of \$567.50.

The landlord testified that the tenants failed to pay rent for May, 2015 on the last day of April, 2015. The landlord served the tenants with a 10 Day Notice to End Tenancy on May 01, 2015 by posting the Notice to the tenants' door. The tenants did not pay the rent within the five allowable days and fully vacated the rental unit on May 11, 2015.

The landlord testified that she placed adverts to re-rent the unit on two internet sites on May 05, 2015. The landlord has provided copies of these adverts in documentary evidence. The landlord testified that she has not had much response to the adverts and the two interested tenants were not working and had pets so the landlord did not rent the unit to either of them. The landlord testified that to date the unit has still not been

rented and therefore the landlord seeks to recover the unpaid rent for May and a loss of rent for June, 2015.

The landlord testified that at the start of the tenancy the previous tenants had not cleaned the rental unit. The landlord and tenants agreed that the tenants could move in early and clean the unit in lieu of one week's rent. At the end of the tenancy the landlord found that the tenants had not cleaned the unit as agreed and the landlord therefore seeks to recover the one free week rent of \$281.25. The landlord testified that the fridge was dirty and had tenants food in it and other areas of the unit were not cleaned. The landlord agreed that on the move in inspection report the landlord did not document that the unit was not clean as the tenant agreed to clean it. When the tenants vacated the landlord testified that she did not arrange the move out inspection with the tenants prior to them vacating the unit and then did not have a forwarding address for the tenants in order arrange the move out inspection with them. The move out inspection was not completed

The landlord seeks an Order to be permitted to keep the security deposit of \$567.50 to offset against the unpaid rent.

The tenant attending the hearing disputed the landlord's claim to recover unpaid rent for May, 2015. The tenant agreed that they did not pay rent for May, 2015 but testified that they did go to the landlord's home to pay the rent in cash as requested by the landlord but the landlord was not at home. The next day the landlord served the tenants with the 10 Day Notice to End Tenancy so the tenants decided to move from the rental unit. The tenant testified that they had removed all their belongings on May 07, 2015 and a trailer was removed on May 11, 2015. The tenant testified that they should not therefore have to pay rent for May or June, 2015.

The tenant testified that they did clean the rental unit as agreed after the previous tenants left it in a mess. At the end of the tenancy there were only a few flattened boxes left in the unit but it had been cleaned and left in a reasonable condition.

The tenant disputed the landlord's claim to keep the security deposit.

The landlord testified that she did not want the tenants to vacate the unit as she went to a lot of trouble getting them into the unit. The landlord testified that there was food left in the fridge and the cleaning was not done. The landlord referred to a written statement provided by a witness to confirm the condition the unit was in . In this statement her witness referred to the unit as a real mess and boxes all over.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for unpaid rent for May, 2015; I refer the parties to s. 26 of the *Act* which 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.

Consequently I am satisfied from the evidence before me that the tenants failed to pay rent for May on the day it was due. If the landlord was not available to receive the rent payment in cash, the tenants had alternative ways to pay the rent such as by leaving the landlord with a cheque or money order. The tenants also had five days to pay the rent after the 10 Day Notice was served upon them and they failed to do that to maintain their tenancy. It was the tenants' choice to vacate the rental unit and therefore I find the landlord is entitled to recover the rent for May of **\$1,125.00**.

With regard to the landlord's claim for a loss of rental income for June; this was a fixed term tenancy until the end of July, 2015. The landlord has shown that she attempted to mitigate the loss by trying to re-rent the unit as quickly as possible. The unit has still not been re-rented and the landlord is entitled to recover any loss of rent up to the time the

tenancy can be legally ended. I therefore find the landlord has established a claim for a loss of rent for June, 2015 of **\$1,125.00**. As the landlord may still be able to re-rent the unit for July, 2015 I am not prepared to deal with a loss of rent for that month at this hearing.

With regard to the landlord's claim that the tenants did not clean the unit by the end of the tenancy, as agreed at the start of the tenancy; the landlord has testified that the tenants were given one week's rent free in lieu of cleaning up after the previous tenants. In this matter the landlord has the burden of proof and when one person's evidence contradicts that of the other, the landlord is required to provide corroborating evidence to meet the burden of proof. The landlord referred to a letter from a witness who saw the unit at the end of the tenancy. This letter does not confirm the landlord's testimony that the unit had not been cleaned as agreed. The letter simply states the unit was a mess and there were boxes left. Consequently, in the absence of any corroborating evidence to show the unit was not cleaned by the tenants in lieu of rent I find the landlord has not met the burden of proof in this matter. I therefore dismiss the landlord's claim to recover a week's rent of \$281.25.

I Order the landlord to keep the security deposit of **\$567.50** in partial satisfaction of the landlord's claim pursuant to s. 38(4)(b) of the *Act*.

As the landlord's claim has some merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for May	\$1,125.00
Loss of rent for June	\$1,125.00
Filing fee	\$50.00
Less security deposit	(-\$567.50)
Total amount due to the landlord	\$1,732.50

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 **\$1,732.50**. 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 22, 2015

Residential Tenancy Branch

