



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – CNC

For the landlords – OPR, OPC, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to cancel a One Month Notice to End Tenancy for Cause. The landlords applied for an Order of Possession for unpaid rent or utilities; For an Order of Possession for cause; for a Monetary Order for unpaid rent; for an Order permitting the landlords to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing DM advised that the tenants are no longer residing in the rental unit, and therefore, the landlords withdraw their application for an Order of Possession.

The hearing went ahead as scheduled; however, the tenants failed to dial into the conference call during call. Therefore, no hearing took place regarding the tenants' application as the tenants have failed to present the merits of their application. Consequently, the tenants' application is dismissed without leave to reapply.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*, served in person to each tenant on June 09, 2015. Proof of service documents signed by the landlord and witness were provided in documentary evidence.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order to recover unpaid rent?
- Are the landlords entitled to keep the security deposit?

Background and Evidence

DM testified that this tenancy started on October 27, 2010. Rent for this unit was \$1,100.00 per month, due on the first day of each month. The tenants paid a security deposit of \$550.0000 and a pet deposit of \$200.00 on October 27, 2010.

DM testified that the tenants were served a One Month Notice to End Tenancy for Cause on April 30, 2015 in person. DM testified that the tenants failed to pay rent for June, 2015 of \$1,100.00. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent on June 02, 2015 and this was served upon the tenants in person. Proof of service documents with a witness's signature have been provided in documentary evidence. The tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on June 12, 2015. The tenants did not pay the outstanding rent and although the tenants did file an application to dispute the One Month Notice to End Tenancy the tenants have not appeared at the hearing today. DM testified that the tenants vacated the rental unit sometime around June 20, 2015 although the landlords are not aware of the actual day the tenants left the unit. The landlords seek to recover unpaid rent for June, 2015 of \$1,100.00.

DM testified that they found that the tenants caused a great deal of damage to the rental unit which was not repaired before they vacated. DM testified that the landlords have

already removed three truckloads of garbage from the property, there are knife holes in the walls and floors, gunshot holes in the walls, the blinds are damaged and need to be replaced, the entire unit needs to be cleaned including human and pet urine and fecal matter, the walls are covered in a sticky substance, there is a hole in the bathroom floor and window screens need to be replaced due to human and pet damage. Due to the level of work required in the unit the landlords have not yet been able to advertise the unit for rent. The landlords estimated that the repairs and clean up could take nearly a month to complete. The landlords therefore seek to recover a loss of rental income for July, 2015 of \$1,100.00

The landlords seek an Order to retain the tenants' security and pet deposit in partial satisfaction of their monetary claim and an Order to recover the filing fee from the tenants.

Analysis

The tenants did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords' documentary evidence and sworn testimony before me. 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.

I am satisfied with the evidence before me that the tenants have failed to pay rent for June, 2015 of \$1,100.00. Consequently, I find that the landlord is entitled to recover unpaid rent for June of **\$1,100.00** from the tenants.

With regard to the landlords' claim for a loss of rent for July, 2015; I refer the parties to the Residential Tenancy Policy Guidelines # 3 which provides guidance as to when a landlord can hold a tenant liable for a loss of rent. This states, in part, that in a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. It goes on to state that even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

I find the landlords did serve the tenants with a 10 Day Notice to End Tenancy and I am also satisfied from the undisputed evidence before me that the tenants caused damage to the unit which has rendered the unit un-rentable until the landlords are able to repair the damages and clean the unit. Consequently, the landlords have established a claim to recover a loss of rent for July as the scope of work required in the unit to make it rentable again could potentially take until the end of July to complete. The landlords are entitled to recover **\$1,100.00** from the tenants.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of **\$550.00** and the pet deposit of **\$200.00** in partial satisfaction of their monetary claim.

As the landlords have been successful in this matter, the landlords are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*. The landlords will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent for June	\$1,100.00
Loss of rent for July	\$1,100.00

Less security and pet deposit	(-\$750.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$1,500.00

Conclusion

For the reasons set out above, I grant the landlords a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$1,500.00**. 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.

The tenants' application is dismissed in its entirety without leave to reapply.

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 23, 2015

Residential Tenancy Branch

