



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD

Introduction

This hearing dealt with the landlords' application pursuant to the Residential Tenancy Act ("the Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, damage or loss pursuant to section 67; and
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenants did not attend this hearing, although the teleconference continued until 11:15 am in order to enable the tenants to connect with this hearing scheduled for 11:00 am. Landlord LG attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. She testified that the tenants had vacated the rental unit and therefore, she withdrew her application for an Order of Possession.

Landlord LG testified that the tenants were sent her Application for Dispute Resolution by registered mail on May 14, 2015. She provided sworn testimony that the tenants still resided in the rental unit at that time. She provided two tracking numbers and information regarding the Canada Post mailings; one for each tenant. In accordance with section 89 and 90 of the *Residential Tenancy Act*, I find both tenants deemed served with the landlords' dispute resolution package with Notice of Hearing as of May 19, 2015, 5 days after the mailings.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent, damage or loss arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit towards any monetary award?

Background and Evidence

This tenancy began on April 1, 2015. Landlord LG testified that the tenants vacated the rental unit on or about May 15, 2015. Landlord LG submitted a rental agreement showing that the rental amount of \$1000.00 was payable on the first of each month. She testified that the tenants had paid a security deposit of \$500.00 at the start of the tenancy. She applied to retain the security deposit in satisfaction of the costs incurred as a result of this tenancy.

Landlord LG testified that the tenants did not pay May 2015 rent in the amount of \$1000.00 due on May 1, 2015. As a result, the landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent. The tenants did not pay rent after receiving this notice. The tenants did not apply to dispute the notice under the *Act*. Landlord LG testified that the tenants simply told her that they did not have the money to pay the rent. Landlord LG testified that rent for May 2015 remains outstanding as of the date of this hearing.

The landlord sought a monetary award of \$500.00 for unpaid rent and damage to the rental unit. Landlord LG provided sworn undisputed testimony that the tenants did not pay \$1000.00 rent for May 2015. She testified that the tenants also left the rental unit extremely dirty when they left. She testified that the 2200 square foot house needed to be cleaned extensively and that she believes the tenants intentionally caused an extra mess before vacating the rental unit. She submitted a bill in the amount of \$500.00 for cleaning services.

Landlord LG testified that these tenants were very young and she did not wish to claim the full amount of rent and her costs incurred for damages. She sought only to recover the security deposit to satisfy \$500.00 of her costs. She testified that she has re-rented the unit for July 1, 2015 and does not wish to seek further costs against the tenants.

Analysis

The sworn and undisputed evidence at this hearing was that the tenants failed to pay the May 2015 rent or apply to dispute within five days of receiving the 10 Day Notice to End Tenancy. The landlord withdrew her application for an Order of Possession as the tenants have vacated the rental unit. However, the landlord sought to retain the tenants' security deposit in partial satisfaction of her monetary loss as a result of this tenancy.

To establish a claim for a monetary order under section 67 of the *Act*, there is an onus on the claimant to establish proof on a balance of probabilities that they incurred loss; that the loss is as a result of the actions of the respondent; and to establish the particulars of their loss with the best evidence available. In this case, the landlord has provided testimony and evidence to show that the tenants did not pay rent in May 2015.

Therefore, the landlord is entitled to \$1000.00 for unpaid rent. However, the landlord sought \$500.00 in her application. Therefore, I issue a monetary order to the landlord in the amount of \$500.00.

The landlord also provided testimony and supporting documentary evidence that the tenants left the rental unit in a condition that was not neat and clean. She provided sufficient evidence to show that the tenants are responsible for cleaning costs at the end of this tenancy in the amount of \$500.00. While the landlord is entitled to reasonable compensation for this expense, again, the landlord has merely sought to retain the security deposit in this matter.

In this case, section 72(2) is relevant in that, if a landlord is awarded a monetary order against a tenant, that award may be satisfied in full or in part by the retention of the security deposit. Therefore, I allow the landlord to retain the security deposit in full satisfaction of the amount she has sought in this application.

Conclusion

I allow the landlord to retain the tenants' entire security deposit in the amount of \$500.00.

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 24, 2015

Residential Tenancy Branch

