



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Tenants stated that they did not receive a second evidence package containing a different tenancy agreement that was provided to the Residential Tenancy Branch on May 8, 2015 by the Landlord. The Landlord gave confusing and unclear evidence in relation to this package and stated that the evidence package was given to each Tenant on May 1, 2015. I do not find this to be credible or persuasive evidence and therefore prefer the Tenant’s evidence. Accepting that the Tenants were not provided with the second evidence package I decline to consider this evidence.

The Tenants stated that the Landlord had a bailiff remove the Tenants on June 12, 2015. The Landlord confirmed that they removed the Tenants pursuant to an order of possession that was obtained in July 2014 at a previous hearing. As the Landlord has

removed the Tenants from the unit I dismiss the Landlord's claim for an order of possession.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The Landlord provided a copy of a tenancy agreement that was only signed by Tenant RC and indicates that rent of \$1,000.00 is payable monthly on the 30th day of each month. The Landlord states that the tenancy started on January 30, 2012. The Tenants agree that Tenant VJ pays \$1,000.00 per month and Tenant RC pays \$800.00 per month. The Landlord states that a total of \$900.00 was collected as a security deposit.

The Landlord provided receipts n monies were paid for rents in April and May 2015 and that an amount of rent owing was carried forward from before April 22, 2015. No other documented accounting evidence was provided by the Landlord. The Landlord states that one or both of the Tenants failed to pay some portion of arrears as set out in a previous settlement agreement and for which the Landlord obtained a monetary order. The Landlord also states that the Tenants owe some amount of monies from October 2014 and did not pay rent for April 2015. The Landlord was further unable to provide dates that the rents being claimed were accrued.

The Tenants state that while they did owe rents in the past these monies were previously paid to the Landlord, that the Parties shook hands on this payment, and that no rent monies remain outstanding.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. The burden of proof lies with the party making the claim. The Landlord's evidence was completely unclear and confused. Although the tenancy

agreement only provides for monthly rent of \$1,000.00, based on undisputed oral evidence of the Tenants I accept that the monthly rent payable was \$1,800.00. The Landlord did not provide any supporting accounting evidence for their monetary claim, no monetary worksheet was completed and it appears that part or all of the rents being claimed were sums included in a previous monetary order. Given the lack of clarity in the Landlord's oral evidence I can only accept the Tenant's clearly stated evidence that no rents are owed. I therefore dismiss the Landlord's claim for unpaid rent. As the tenancy had not ended at the time of the application, the claim for a security deposit in the circumstances was premature and I dismiss this claim with leave to reapply.

Conclusion

The Landlord's claims for unpaid rent and the filing fee are dismissed.

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 17, 2015

Residential Tenancy Branch

