



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, MNR, MNSD, FF, CNR

Introduction

This hearing dealt with the landlords' application against both tenants, pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent and for landlords' use of property, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security and pet damage deposits in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

This hearing also dealt with the tenant TH's cross-application against landlord DP, pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated April 13, 2015 ("10 Day Notice"), pursuant to section 46;

Landlord CP ("landlord") and tenant TH ("tenant") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she had authority to speak on behalf of her husband, the other landlord DP named in these applications, as an agent at this hearing. The tenant confirmed that he had authority to speak on behalf of his wife, the other tenant SH named in the landlords' application, as an agent at this hearing.

Both parties confirmed receipt of each other's application for dispute resolution hearing packages ("Landlords' Application" and "Tenant's Application"). In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with each other's applications.

At the outset of the hearing, the landlord confirmed that she wished to withdraw the landlords' application for an order of possession for unpaid rent and for landlords' use of property, as the tenants had already vacated the rental unit. Accordingly, these portions of the landlords' application are withdrawn.

The tenant also confirmed that he wished to withdraw his application to cancel the landlord's 10 Day Notice. Accordingly, the tenant's entire application is withdrawn.

Issues to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to retain all or a portion of the tenants' security and pet damage deposits in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

Both parties agreed that this tenancy began on July 1, 2010 and ended on May 15, 2015. Monthly rent in the amount of \$1,400.00 was payable on the first day of each month. Both parties agreed that a security deposit of \$675.00 and a pet damage deposit of \$275.00 were paid by the tenants and the landlords continue to retain both deposits. The landlord provided a copy of the written tenancy agreement for this hearing. The landlord confirmed that, as per the tenancy agreement, monthly rent of \$1,350.00 was initially due, but that the rent was increased to \$1,400.00 as of August 1, 2014. The landlord confirmed that she issued a legal notice of rent increase with three months' notice to the tenants in accordance with the *Act*. The landlord did not provide a copy of this rent increase notice for this hearing. During the hearing, I advised the landlord that her attempt to increase the monthly rent was illegal, as she collected rent more than the allowable amount under the *Residential Tenancy Regulation*. The maximum allowable amount for 2014 is 2.2% plus the monthly rent of \$1,350.00, which totals \$29.70 per month, while the landlord increased the rent by \$50.00 per month. The landlord acknowledged that she had used the incorrect percentage for 2014.

Both parties agreed that pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated February 25, 2015 ("2 Month Notice"), which the tenants were issued by the landlords, the tenants were entitled to one month's free rent for April 2015. The landlords seek \$700.00 for a loss of rent from May 1 to 15, 2015, which they say the tenants did not pay. The landlord stated that the tenants caused damage to the

rental unit, including failing to report mold in the unit, which will likely cost approximately \$2,000.00 to repair and renovate. The landlord also indicated that she has to dispose of items left behind in the rental unit by the tenants. The landlords also seek to recover the \$50.00 filing fee for their application.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues with respect to this entire tenancy:

1. Both parties agreed that the landlords will retain the tenants' entire security deposit of \$675.00 and pet damage deposit of \$275.00;
2. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlords' application at this hearing and any issues arising out of this tenancy;
3. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both parties' potential applications against each other and any issues arising out of this tenancy;
4. Both parties agreed that they will not initiate any further claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise a full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties gave verbal sworn affirmation at the hearing that they understood and agreed to the above settlement terms free of any duress or coercion. Both parties confirmed that they understood that this settlement is legal, final, binding and enforceable, settling all aspects of this dispute and arising out of this tenancy.

Both parties confirmed that they would advise their respective spouses about the outcome of this hearing and that they both understood that this settlement is legal, final, binding and enforceable against their spouses as well.

Conclusion

To give effect to the settlement reached between the parties, I order the landlord to retain the tenants' entire security deposit of \$675.00 and pet damage deposit of \$275.00.

The landlords' application for an order of possession for unpaid rent and for landlords' use of property is withdrawn.

The tenant's entire application is withdrawn.

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

