



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MND MNSD FF

Introduction

This hearing dealt with a landlords' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit and pet damage deposit, for a monetary order for damages to the rental unit, site or property, and to recover the cost of the filing fee.

The landlords appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlords were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlords testified that the tenant was served with the Notice of Hearing, Application and documentary evidence on June 14, 2015 at 5:10 p.m. or 5:15 p.m. in person at the rental unit and that both landlords were present. Based on the undisputed testimony of the landlords and without any evidence to prove to the contrary, I accept that the tenant was sufficiently served in accordance with the *Act*.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord H.C. requested to withdraw their request for an order of possession, as the tenant vacated the rental unit on or about July 23, 2015. As such a request does not prejudice the tenant, the landlords were permitted to withdraw that portion of their application.

Landlord H.C. also requested to withdraw their request to retain the tenant's security deposit and pet damage deposit as the landlord stated that the tenant has not provided

her written forwarding address to the landlords. As such a request does not prejudice the tenant, the landlords were permitted to withdraw that portion of their application.

In addition, landlord H.C. requested to withdraw their request for damages as he explained that this application was supposed to be specific to unpaid rent. As such a request does not prejudice the tenant, the landlords were permitted to withdraw that portion of their application.

Given the above, the landlords are at liberty to reapply towards the tenant's security deposit and pet damage deposit in accordance with the *Act*, and for damages, however, I note that withdrawing those portions of the landlords' application described above does not extend any applicable timelines under the *Act*.

Issues to be Decided

- Are the landlords entitled to a monetary order for unpaid rent under the *Act*, and if so, in what amount?
- Are the landlords entitled to the recovery of the cost of the filing fee?

Background and Evidence

The landlords testified that a month to month tenancy agreement began on October 1, 2012. Rent in the amount of \$1,000 was due on the first day of each month. The tenant paid \$1,000 as a security deposit and \$500 as a pet damage deposit at the start of the tenancy.

Landlord H.C. testified that he served a 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated May 2, 2015 on May 5, 2015 at the rental unit, which was witnessed by the other landlord. The tenant accepted the 10 Day Notice and did not dispute the 10 Day Notice which had an effective vacancy date of May 5, 2015 and indicated \$1,000 in rent was due on May 2, 2015.

The landlords stated that the tenant vacated the rental unit on or about July 23, 2015 and is seeking a total of \$3,000 in unpaid rent, comprised of unpaid rent of \$1,000 for the months of May, June and July of 2015.

The landlords testified that the filing fee he paid was \$100, as his original claim was for \$5,500 comprised of \$3,000 in unpaid rent plus the \$1,500 damage deposit which he considered to include the pet damage deposit.

The landlords continue to hold the tenant's \$1,000 security deposit and \$500 pet damage deposit. The landlords testified that the tenant has not provided her written forwarding address since vacating the rental unit.

Analysis

Based on the documentary evidence and the landlords' undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Claim for unpaid rent– Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I accept the landlords' undisputed testimony that the tenant failed to pay \$3,000 in rent for the months of May, June and July of 2015 as rent is \$1,000 per month and due on the first day of each month. Therefore, I find the landlords have met the burden of proof and are entitled to \$3,000 in unpaid rent as claimed.

Although the landlords paid \$100 as a filing fee when their claim was originally \$5,500, as any claims over \$5,000 require a \$100 filing fee, I find the landlords' amended claim of \$3,000 would have only required a filing fee of \$50. Therefore, I grant the landlords the recovery of \$50 of their \$100 filing fee as a result.

Monetary Order – I find that the landlords have established a total monetary claim in the amount of **\$3,050** consisting of \$3,000 in unpaid rent and \$50 of the filing fee. The landlords testified that they specifically did not want the security deposit and pet damage deposit to be offset from their monetary claim. I find the landlords breached section 19(1) of the *Act* by requesting and accepting a \$1,000 security deposit when monthly rent was only \$1,000. Section 19(1) of the *Act* reads:

Limits on amount of deposits

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

Section 19(2) of the *Act* reads:

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Based on the above, I find the landlords requested and received an excess security deposit of \$500 that was not authorized under the *Act* and that the maximum security deposit the landlords should have requested was \$500, yet the landlords continue to hold a \$1,000 security deposit plus a \$500 pet damage deposit. Therefore, **I ORDER** that the \$500 overpayment by the tenant related to the security deposit be deducted from the landlords' \$3,050 monetary claim; resulting in a balance owing by the tenant to the landlords in the amount of **\$2,550**.

Therefore, I find that the landlords now hold a security deposit of \$500 and a pet damage deposit of \$500 of the tenants.

I grant the landlords a monetary order pursuant to section 67 of the *Act* in the amount of \$2,550.

Conclusion

The landlords have been granted a monetary order under section 67 of the *Act* in the amount of \$2,550. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 31, 2015

Residential Tenancy Branch

