



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF
CNR, MNSD, ERP, RP

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlord make emergency repairs for health or safety reasons; and for an order that the landlord make repairs to the unit, site or property.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on September 9, 2015, and despite making an application for dispute resolution that was scheduled to be heard jointly with the landlord's application, no one for the tenants attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord. The landlord testified that each of the 2 tenants was individually served with the landlord's hearing packages by registered mail on September 9, 2015, and the landlord was given the opportunity to provide evidence of that by facsimile after the hearing concluded. The landlord has provided copies of 2 envelopes addressed to each of the 2 tenants which contain tracking numbers and stamps from Canada Post bearing that date, which have been returned to the landlord unclaimed, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing, the landlord advised that the tenants have vacated the rental property and the landlord withdraws the application for an Order of Possession.

Since the tenants have not attended the hearing, the tenants' application is hereby dismissed in its entirety without leave to reapply.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically loss of rental revenue?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on April 1, 2015 which was to expire on April 1, 2017, thereafter reverting to a month-to-month tenancy, although one of the named tenants has lived in the rental unit since 2014 under a previous tenancy agreement. The new tenancy agreement, a copy of which has been provided, was signed on April 1, 2015, and the landlord is not certain when the tenants moved out. BC Hydro has advised the landlord that power was cut off to the rental unit on September 8, 2015, and the landlord attended the rental unit on September 9, 2015 and the tenants had vacated.

Rent in the amount of \$1,600.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$800.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The tenants failed to pay rent when it was due for the month of August, 2015 and the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. The notice is dated August 20, 2015 and contains an effective date of vacancy of August 30, 2015 for unpaid rent in the amount of \$1,600.00 that was due on August 1, 2015. The tenants further failed to pay any rent for September, 2015, and the landlord claims unpaid rent for both months totaling \$3,200.00

as well as loss of rental revenue for October and to the end of the fixed term. No rent has been paid since the issuance of the notice.

The landlord has not been served with an application for dispute resolution by the tenants disputing the notice.

Analysis

Having received the tenants' application for dispute resolution seeking to cancel the notice to end the tenancy, and upon reading the tenancy agreement provided by the landlord, I accept the testimony of the landlord that the tenants are indebted to the landlord for unpaid rent for the month of August, 2015 in the amount of \$1,600.00. I am also satisfied that the tenants vacated the rental unit sometime during the month of September, 2015 without notifying the landlord or paying any rent to the landlord. I find that any notice that the tenants may have given to the landlord would not have ended the tenancy prior to the end of September, 2015, and the landlord has established a claim for unpaid rent for the month of September, 2015.

I am not satisfied that the landlord's claim for loss of rental revenue to the end of the fixed term is justified, in that the landlord has not provided any evidence with respect to re-renting.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

I order the landlord to keep the \$800.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference in the amount of \$2,450.00.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

The landlord's application for an Order of Possession is hereby dismissed as withdrawn.

I hereby order the landlord to keep the \$800.00 security deposit and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,450.00.

This order is final and binding and may be enforced.

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: November 12, 2015

Residential Tenancy Branch

