



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPR MNR MNSD MNDC FF
For the tenant: CNR LRE

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlords applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to keep the tenant’s security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) and for an order to suspend or set limits on the landlords’ right to enter the rental unit.

The landlords attended 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 evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, the tenant’s application was **dismissed without leave to reapply** after the ten minute waiting period as the tenant failed to attend the hearing to present the merits of her application.

Furthermore, as the tenant failed to attend the hearing, I considered service of the landlords’ Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), Application for Dispute Resolution (the “Application”) on the tenant. The landlords testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on November 27, 2015. The landlords provided a registered mail tracking number in evidence and confirmed that the registered mail package was successfully signed for and delivered on November 30, 2015 which is supported by the online registered mail tracking website information. Based on the above, I accept that the tenant was served with the landlords’ Notice

of Hearing, Application and documentary evidence by registered mail as of November 30, 2015, the date the registered mail package was signed for and accepted.

Preliminary and Procedural Matter

At the outset of the hearing, the landlords confirmed that they were withdrawing their request for an order of possession as the tenant vacated the rental unit on November 30, 2015 which was permitted pursuant to section 64(3) of the *Act*.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

According to the landlords, a fixed term tenancy began on December 1, 2014 and would have reverted to a month to month tenancy after November 30, 2015. The tenant vacated the rental unit on November 30, 2015, according to the landlords.

The landlords' monetary claim for \$4,500.00 is comprised of damages, unpaid rent and loss of rent. A copy of the 10 Day Notice dated November 14, 2015 was submitted in evidence and indicates that \$1,720.00 was due as of November 1, 2015 and lists the effective vacancy date as November 25, 2015.

While the tenants vacated the rental unit on November 30, 2015, the landlords are also seeking loss of December 2015 rent, and loss of January 2016 rent.

The landlords submitted a copy of the tenancy agreement, breakdown of their monetary claim, photos, condition inspection report and the 10 Day Notice in evidence.

Analysis

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

Firstly, the landlords are not entitled to loss of December 2015 rent and January 2016 rent as the tenancy ended based on the effective date of the 10 Day Notice issued by the landlords that the tenant vacated five days after. In reaching this decision, I note that there was no evidence presented regarding any attempt by the landlords to re-rent the rental unit in December. Furthermore, there is no remedy for loss of January 2016 rent under the *Act* as the tenancy

reverted to a month to month tenancy as of November 30, 2015, which is the same date the tenants vacated the rental unit.

I have reviewed the landlords' evidence which includes photos, a condition inspection report, and their testimony. In addition, as the tenant was served with the Notice of Hearing, Application and amended Application, and documentary evidence and did not attend the hearing, I consider the remainder of the landlords' application for **\$3,965.81** to be unopposed by the tenant.

As a result, I find that the landlords are successful with their claim for \$3,965.81. I find the landlords also are entitled the recovery of the cost of the filing fee in the amount of **\$50.00** as their application has merit. This brings the total monetary claim of the landlords including the filing fee to **\$4,015.81**.

The landlords continue to hold the tenant's security deposit of \$860.00 which has not accrued any interest to date.

I authorize the landlords to retain the tenant's full security deposit of \$860.00 in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of **\$3,155.81**.

Conclusion

The landlords' application is successful.

The landlords have been authorized to retain the tenant's full security deposit of \$860.00 in partial satisfaction of the landlords' monetary claim. The landlords have also been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of \$3,155.81. 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: February 9, 2016

Residential Tenancy Branch

