



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR, MNSD, MNDC, FF

Introduction

This is an application brought by the Landlord(s) requesting a monetary order in the amount of \$1813.22, and recovery of the \$50.00 filing fee. The applicants are also requesting an order to keep the full security/pet deposit towards the claim.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

The parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

The parties agree that this tenancy began on January 1, 2014 with a monthly rent of \$1465.00 due on the first of each month.

The parties also agree that the tenant paid a security deposit of \$725.00, and the pet deposit of \$725.00 and that both were paid on December 13, 2014.

The landlord testified that an Order of Possession was issued against the tenants on July 23, 2015, requiring that the tenants vacate the rental unit by July 31, 2015.

The landlord further testified that they agreed to allow the tenant to stay until the end of August 2015, and collected rent for use and occupancy only; however they did send the tenants written notice that they would require that they vacate by the end of August 2015 or they would be enforcing the writ of possession through the Supreme Court.

The landlord further testified that the tenant refused to vacate at the end of August 2015, and therefore they did enforce the order through the Supreme Court and, with the use of a bailiff, had the tenant removed on September 7, 2015, with the moveout inspection being done on September 8, 2015.

The applicants are therefore requesting a monetary order as follows:

Prorated rent for September 2015	\$311.50
Bailiff costs	\$1501.72
Filing fee	\$50.00
Total	\$1863.22

The applicants are further requesting an order allowing them to keep the full security/pet deposit totaling \$1450.00 and requested a monetary order be issued for the remaining \$413.22.

The tenant testified that she does not believe the landlords claim should be allowed because, although there was a Order of Possession issued against them, they were always in touch with the landlord and were willing to continue paying the rent for the month of September 2015, and therefore there was no need for the landlord to enforce the Order of Possession.

The tenant further testified that they had originally intended to vacate by the end of August 2015, however her daughter went into a depression and they were unable to deal with moving at that time, and therefore they did offer to pay the full September 2015 rent to the landlords if they were allowed to stay.

The tenant further testified that the landlord's decision to enforce the Order of Possession basically made them homeless and they do not believe that that is the mandate of a Housing Corporation.

The tenant further testified that at the beginning of the tenancy they were required to pay an extra \$795.00 prorated rent for December 15 through December 31 of 2013 or else the landlord would have re-rented the unit, even though they did not want to move in until January 1, 2014. She therefore believes that that \$795.00 should be taken into consideration and deducted off of the landlords claim.

Analysis

It is my finding that the landlord has established the right to the full amount claimed against the tenants.

An Order of Possession was issued requiring that the tenants vacate the rental unit by July 31, 2015 and although the landlords agreed to allow the tenants to stay until the end of August 2015, the landlords were not required to allow any further extensions, and, in fact, informed the

tenants that there would not be any further extensions. Therefore when the landlords enforce the Order of Possession through the Supreme Court they were within their rights to do so.

It is my decision therefore the tenants are liable for rent for the period of time they were in the rental unit in the month of September 2015, and they are also liable for the bailiff costs required to have the tenants removed from the rental unit when they failed to do so as required.

I therefore allow the full claim as follows:

Prorated rent for September 2015	\$311.50
Bailiff costs	\$1501.72
Filing fee	\$50.00
Total	\$1863.22

I will not deduct the \$795.00 prorated rent that the tenants paid at the beginning of the tenancy, because the tenants signed the tenancy agreement agreeing to pay that amount and therefore the tenants are bound by that agreement.

Conclusion

I have allow the landlords full claim of \$1863.22 and I therefore Order that the landlords may retain the full security/pet deposit of \$1450.00 and pursuant to section 67 of the Residential Tenancy Act I have issued a Monetary Order for the respondents to pay \$413.22 to the landlords.

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: March 30, 2016

Residential Tenancy Branch