



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit 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.

The two tenants, "tenant JW" and "tenant DL" did not attend this hearing although it lasted approximately 50 minutes. The landlord (the "landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that she personally served the tenants' with the landlord's application for dispute resolution hearing package ("Application"), dated February 28, 2016, on the same date. The landlord attached a witnessed proof of service, signed on February 28, 2016, with their application. In accordance with section 89 of the Act, I find that the tenants were served with the Application on February 28, 2016.

The landlord testified that she served the tenants with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 24, 2016 ("10 Day Notice"), on the same date, by way of posting to the rental unit door where the tenants were residing. The landlord provided a signed, witness proof of service. In accordance with sections 88 and 90 of the Act, I find that the tenants were deemed served with the landlord's 10 Day Notice on February 3, 2016, three days after its posting.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and utilities?

Is the landlord entitled to a monetary award for unpaid rent and utilities?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord testified that this tenancy began on December 15, 2014 for a fixed term until December 14, 2015 and was renewed on January 1, 2016 on a fixed term to end on December 31, 2016. Monthly rent in the amount of \$1,850.00 was payable on the first day of each month. A security deposit of \$900.00 and pet deposit of \$900.00 was remitted by the tenants' on December 15, 2014. The landlord continues to retain these deposits.

On January 24, 2016, the landlord issued a 10 Day Notice, indicating that rent in the amount of \$2,750.00 was due on January 1, 2016. The notice indicates an effective move-out date of February 3, 2016. During the hearing the landlord testified the tenants' vacated the rental unit on or about March 28, 2016 and advised that she wished to withdraw her claim for an order of possession.

The landlord seeks a monetary order of \$6,700.00 for unpaid rent from December to April. The landlord claimed that the tenants paid a total of \$2,550.00 in rent for the above five months. The landlord testified the initial tenancy agreement that covered the period of December 15, 2014 to December 14, 2015 stipulated that the annual water/garbage collection bill was to be paid by the tenants. The landlord also testified the tenant was responsible for gas and hydro payments in 2015. The landlord stated that upon initial occupancy of the rental unit, the tenants did not receive the utility bills direct from the utility companies because service was still in the landlord's name. The landlord requested the tenants' repay the early utility bills throughout the tenancy but was unsuccessful in recovering them. The landlord is now seeking a total of \$835.04 in

outstanding utilities from 2015. The landlord has submitted copies of the utility bills and tenancy agreements.

The landlord testified to the condition of the rental unit following the tenants' vacancy and presented witnesses to corroborate her position. The landlord and one witness testified that a trailer belonging to the tenants remain on the property along with the tenants personal belongings in the garage. The landlord testified she was seeking \$4,990.00 in damages, specifically to cover the cost and install of new flooring, painting, cleaning and other miscellaneous repairs. The landlord did not provide any invoices for the work done.

The landlord seeks to recover the \$100.00 filing fee for this Application from the tenants.

Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the landlord proved that the current rent for this unit is \$1,850.00. I find the landlord provided undisputed evidence that the tenants failed to pay full rent from December 2015 to March 2016. Although the tenants' had vacated the rental unit prior to April 1, 2016, I find the landlord is entitled to recover April rent. Despite the best efforts of the landlord, the rental unit was not fully prepared for a new tenancy effective April 1, 2016 as evidenced by the tenants' remaining property at the rental unit. Therefore, I find that the landlord is entitled to \$6,700.00 in rent.

As per the signed tenancy agreement dated December 13, 2014, the tenants were responsible for the annual water and garbage bill until the agreement expired on December 14, 2015. The agreement also specified that water and electricity was not included in the rent. Based on this evidence, I find the landlord is entitled to recover the outstanding utilities in the amount of \$835.04.

Although the landlord and witnesses testified to the condition of the rental unit and the costs incurred in repairing it, I find the claim to damages premature as the tenant had not vacated the rental unit at the time the Application was made. This is evidenced by the absence of the damages on the monetary order worksheet submitted with the

Application. Further the landlord has not presented evidence in the form of invoices or work orders. For these reasons I dismiss the landlord's application for damages with leave to reapply. Therefore, I find that the landlord is not entitled to any compensation other than outstanding rent and utilities in the amount of \$7,535.04.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security and pet deposit in the total amount of \$1,800.00 in partial satisfaction of the monetary award for the balance due of \$5,735.04.

As the landlord was successful in this Application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the Application, for a total award of \$5,835.04

Conclusion

The landlord's application for an order of possession is withdrawn.

The landlord's application for damages is dismissed with leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$5,835.04 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 15, 2016

Residential Tenancy Branch