



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 was convened by way of conference call concerning an application made by the landlords 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 landlords 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 landlords and the tenants attended the hearing, and one of the landlords and one of the tenants gave affirmed testimony. The parties were given the opportunity to question each other with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

At the commencement of the hearing, the parties agreed to an Order of Possession in favour of the landlords effective April 29, 2016 at 1:00 p.m. The parties also agreed to meet at the rental unit at that time for the tenants to return the keys that give access to the rental unit to the landlords, and I so order.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Have the landlords 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 for unpaid utilities?
- Should the landlords 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 month-to-month tenancy began on January 1, 2016 and the tenants still reside in the rental unit. Rent in the amount of \$1,600.00 per month is payable on the 1st day of each month and a copy of the tenancy agreement has been provided. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$800.00 which is still held in trust by the landlords and no pet damage deposit was collected.

The landlord further testified that the tenants failed to pay rent in full for the month of March, 2016 and the landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of the 1st page of the 2-page notice has been provided and it is dated March 9, 2016 and contains an effective date of vacancy of March 19, 2016 for unpaid rent in the amount of \$1,600.00 that was due on March 1, 2016. The tenants paid \$300.00 for March, but are also in arrears now for April, 2016. The landlords claim \$1,300.00 for March, \$1,600.00 for April and \$1,600.00 as loss of rental revenue for May, 2016, testifying that the landlords will not now be able to re-rent the rental unit that soon.

The tenants were also supposed to put the utility bills in their name but failed to do so and the landlords have been paying the bills. The landlords claim \$888.00 for unpaid utilities, but have not provided copies of any bills.

The tenant testified that there were issues with the rental unit that were unsafe, and the landlords were verbally told of a number of them but failed to attend the rental unit to deal with any of them.

The tenants agree that \$1,300.00 remains unpaid for March rent, and \$1,600.00 for April, 2016, but disagrees with the landlord's claim for loss of rental revenue. The landlord told the tenants in March, 2016 that he had re-rented the rental unit effective April 1, 2016 to new tenants sight unseen and the tenants had to move out. Copies of text messages have been provided and the tenant testified that the landlord was strong-arming the tenants to move and if they didn't like it he would put their stuff outside. The tenants advised the landlords in the text messages that the landlords had to comply with the *Residential Tenancy Act*.

The tenants also dispute the utilities claimed by the landlords.

Analysis

Where a party makes a monetary claim against another party, the onus is on the claiming party to establish that the loss exists, that the loss exists due to the other

party's failure to comply with the *Act* or the tenancy agreement and the amount of the loss.

Firstly, with respect to the landlords' claim for unpaid rent, the tenants do not dispute that only \$300.00 has been paid for March and no rent has been paid for April, 2016, but there were inefficiencies with the rental unit that the landlords failed to deal with. The *Residential Tenancy Act* states that a landlord is required to provide and maintain a rental unit, but also states that a tenant must pay the rent even if the landlord has not complied with the *Act*. Therefore, I find that the landlords have established a monetary claim for unpaid rent in the amount of \$2,900.00.

The landlords also claim loss of rental revenue for May and the landlord testified that the rental unit will not be ready to re-rent, however that testimony is disputed by the tenants. The tenant testified that the landlords had someone to re-rent sight unseen at the beginning of April, and I see no reason that the landlords will now not be able to re-rent, and I find that the landlords have failed to establish that any loss will exist.

With respect to the landlords' claim for unpaid utilities, in the absence of any bills as evidence and the landlord's approximation in his testimony, I am not satisfied that the landlords have established the amount, and I dismiss that portion of the landlords' application.

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee.

I hereby order the landlords to keep the \$800.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlords for the difference in the amount of \$2,200.00.

DATE	DESCRIPTION	DEBIT	CREDIT	BALANCE
March, 2016	Rent Due/Paid	\$300.00	\$1,600.00	\$1,300.00
April, 2016	Rent Due		\$1,600.00	\$2,900.00
April, 2016	Filing Fee		\$100.00	\$3,000.00
April, 2016	Less Security Deposit	\$800.00		\$2,200.00

Conclusion

For the reasons set out above, and by consent, I hereby grant an Order of Possession in favour of the landlords effective April 29, 2016 at 1:00 p.m. and the tenancy will end at that time. I also order the parties to meet at the rental unit at that time for the tenants to return the keys that give access to the rental unit to the landlords.

I further order the landlords to keep the \$800.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,200.00.

These orders are 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: April 26, 2016

Residential Tenancy Branch