



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, OPR

Introduction

This is an application brought by the Landlord requesting an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, and requesting a Monetary Order for outstanding rent plus the filing fee.

Some documentary evidence and written arguments have 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.

All parties were affirmed.

Issue(s) to be Decided

At the beginning of the conference call the parties testified that the tenant has already vacated the rental unit and the landlord has possession of the unit, and therefore the remaining issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

The landlord testified that the monthly rent for this unit was increased from \$750.00 to \$775.00 in January of 2016.

The landlord further testified that the tenant failed to pay any rent for the month of May 2016 and therefore she is requesting an Order for that outstanding rent and recovery of her filing fee.

The tenant testified that the rent is not \$775.00, it is \$750.00.

The tenant further testified that she has not paid the May 2016 rent, because the landlord's dog attacked her daughter and seriously injured her and she's had a substantial loss of income having to take time to deal with having her daughter in hospital for a one-week period and then needing 24 hour supervision after returning home.

Analysis

First of all it is my finding that the landlord has not met the burden of proving that the rent was increased from \$750.00 to \$775.00 as it is just her word against that of the tenants. The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met.

Therefore, since the tenant has admitted to rent of \$750.00, that is the amount of rent that I will allow.

It is my finding that the landlord has shown that the tenant did not pay any rent for the month of May 2016, and therefore I will allow the landlords claim for that outstanding

rent in the amount of \$750.00, and for recovery of the \$100.00 filing fee for a total of \$850.00.

The tenant stated that rent was not paid due to the financial burden caused by her daughter being bitten by the landlord's dog, however the tenant did not have the right to withhold rent without first getting an Order allowing her to do so.

The tenant does have a right to file a claim against the landlord for damages, and in fact at the hearing stated that she has done so and therefore that issue will be dealt with at a different time.

Conclusion

I have allowed a total of \$850.00 of the landlords claim and at the hearing both the landlord and tenant agreed that the landlord could use the full security deposit of \$325.00 towards that Order, and therefore I Order that the landlord may retain the full security deposit of \$325.00, and, pursuant to section 67 of the Residential Tenancy Act, I have issued a Monetary Order in the amount of \$525.00.

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: June 09, 2016

Residential Tenancy Branch