



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR CNR MNR MNSD FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* for Orders as follows:

Landlord:

- an order of possession for failure to pay rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- cancellation of the landlord's 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

As of the hearing date, the tenant had vacated the rental unit. Accordingly, the landlord's application for an order of possession and the tenant's application to cancel the 10 Day Notice to End Tenancy were withdrawn.

Issues

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

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

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

Background and Evidence

The tenancy began on October 1, 2014 with a monthly rent of \$1100.00 payable on the 1st day of each month. Previous to this tenancy, the parties were involved in a tenancy which began in October 2007 at another property owned by the landlord. This previous tenancy was for a 2 bedroom suite at a monthly rent of \$800.00. A security deposit of \$400.00 was paid by the tenant at this time. In June 2011 the tenants took possession of another unit and the rent of the previous tenancy was subsequently raised to \$1350.00. The landlord submits that no further security deposit was collected at this time and the \$400.00 security deposit was eventually transferred over to the new tenancy. The tenant submits that in June 2011 an additional \$225.00 security deposit was paid and a total of \$625.00 transferred over to the new tenancy. The landlord continues to retain the security deposit.

The landlord issued a 10 Day Notice to end Tenancy on July 2, 2016 which indicates the reason for issuing the Notice was the tenant's failed to pay rent in the amount of \$1100.00 due on July 1, 2016. Previous to this Notice, the landlord issued a 1 Month Notice to End Tenancy dated June 21, 2016 with an effective date of August 1, 2016. This Notice was not disputed by the tenants.

During the hearing, the landlord clarified that his monetary claim is for outstanding rent in the amount of \$2750.00. The landlord testified that this includes unpaid rent in the amount of \$550.00 for the month of June 2016, \$1100.00 for July 2016 and \$1100.00 for August 2016. The landlord's application does not contain a monetary order worksheet providing a breakdown of the amounts claimed and only indicates an amount claimed of \$4050.00.

The landlord submits that the tenants only paid \$550.00 by cheque for June rent. He submits the tenant did not make any payment for July rent. The landlord submits that he should be entitled to rent for the month of August as he was unable to rent the unit for this month as the tenants did not vacate the rental unit until August 7, 2016. He submits the tenant's notified him by text message on August 6, 2016 that they had vacated the unit.

The tenant's submit that rent for the month of June was paid half in cash and half by cheque. The tenant's submit that rent payments had always been made in cash and no cash receipts were provided by the landlord. The tenant acknowledged that rent for

July 2016 was not paid. The tenants submit that they vacated the rental unit on July 28, 2016. The tenants submit that a text message was sent to the landlord on July 29, 2016 advising the landlord they had vacated and that they would return in two days' time to finish cleaning the unit. The tenant's submit that they did not end up returning to the rental unit after July 28, 2016.

Analysis

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenancy agreement required a rent payment of \$1100.00 per month payable on the 1st of each month.

With respect to the landlord's claim for outstanding rent in the amount of \$550.00 for the month of June, I find that on a balance of probabilities that the tenant's did pay this amount in cash. I make this finding as the 10 Day Notice issued to the tenants by the landlord on July 2, 2016 only indicates an outstanding rent amount of \$1100.00 which was payable on July 1, 2016. If the tenants were owing an additional amount of rent previous to this notice being issued I would expect the landlord would include the total outstanding amount in the Notice. Further, there was no evidence presented that the landlord previously requested a payment of outstanding June rent or issued a Notice to end Tenancy for the failure to pay June rent. The landlord did issue a 1 Month Notice to End Tenancy for Cause on June 21, 2016 but this Notice made no reference to outstanding rent for the month of June. Further, the landlord's application did not provide and breakdown of the monetary amount claimed.

The tenant's acknowledged that rent was not paid for the month of July 2016 and I find the landlord is entitled to a monetary award of \$1100.00 for this month.

With respect to the landlord's claim for August rent, I find that the landlord has not met his onus to establish an entitlement to this portion of his claim. The parties' evidence was conflicting on the issue of on which date the rental unit was vacated. The landlord could have provided copies of text messages in support of his allegation that the rental unit was not vacated until August 7, 2016. In the absence of this evidence I find that on a balance of probabilities the tenants vacated the rental unit on July 28, 2016.

As the landlord was for the most part successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$1200.00.

I find the amount of security deposit held by the landlord to only be \$400.00 and not \$625.00 as alleged by the tenants. The tenants did not provide any supporting evidence that a further \$225.00 security deposit was paid to the landlord in June 2011.

The landlord continues to hold a security deposit of \$400.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$800.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$800.00. 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: August 17, 2016

Residential Tenancy Branch