



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

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

- an order of possession for unpaid rent 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants and the landlord's agent (the "landlord") attended the hearing. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The tenants confirmed receipt of the landlord's application for dispute resolution. The tenants confirmed they did not provide any documentary evidence. The tenants did not raise any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issue – Amendment of Landlords' Application

The landlord confirmed that he wished to amend the landlord's application to increase his monetary claim to include July and August 2016 unpaid rent of \$940.00 each. I find that the tenants should reasonably have known that the landlord would suffer this loss of income if they did not pay the rent or vacate the rental unit to permit the landlord to re-rent the unit. Based on this undisputed evidence and in accordance with section

64(3)(c) of the *Act*, I amend the landlord's application to include a monetary claim for July and August 2016 unpaid rent of \$1,880.00 total.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

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

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

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on September 1, 2011 on a month to month tenancy. Rent in the amount of \$940.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$450.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") for unpaid rent of \$1,405.00 due on July 2, 2016 was issued to the tenants on July 3, 2016 by way of posting to the rental unit door where the tenants reside. The notice indicates an effective move-out-date of July 13, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's 10 Day Notice on July 6, 2016, three days after its posting.

The landlord seeks an amended monetary order of \$295.00 for unpaid rent from April 2016 to August 2016. The landlord claimed that the tenants have now paid a total of \$4,405.00 in rent for the above five months. The landlord testified that he issued receipts to the tenants for the payments received after the effective date of the 10 Day Notice, indicating the payments were for "use and occupancy only."

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

The tenants testified that all rent arrears have been paid to date. The tenants did not have their receipts before them so they could not provide details of payments made.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenants may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenants do not pay the overdue rent or file an application, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

In relation to unpaid rent, I prefer the testimony of the landlord. Although the tenants testified that all rent has been paid to date the tenants provided insufficient evidence to show the dates and amounts paid. The landlord provided clear and concise testimony providing dates and amounts of all payments made. Based on the landlord's testimony, I find the tenants did not pay the outstanding rent within five days of receiving the 10 Day Notice.

As the tenants did not pay the overdue rent or file an application to dispute the notice within five days, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires tenants 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 tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$940.00. I find the landlord provided credible evidence that the tenant failed to pay full rent from April 2016 to August 2016. Therefore, I find that the landlord is entitled to \$295.00 in rent.

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 \$395.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$395.00 of the \$450.00 security deposit in full satisfaction of the monetary award. The parties are cautioned to follow the provisions of section 38 of the *Act* in regards to the remaining \$55.00 security deposit balance.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant.**

I order the landlord to retain \$395.00 of the security deposit and address the remaining security deposit balance in accordance with section 38 of the *Act*.

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: September 01, 2016

Residential Tenancy Branch