



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STRATTON VENTURES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, and order to retain the security deposit in partial satisfaction of the claim.

Only the Landlord's representatives, S.S. and D.H. appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

S.S. testified that she served the Tenants with the Notice of Hearing and their Application on February 15, 2016 by registered mail to both Tenants. A copy of the registered mail tracking numbers were provided in evidence and are reproduced on the cover page of this my Decision. Under the *Act* documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of February 20, 2016 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

S.S. testified that the Tenants moved from the rental unit on approximately December 28, 2015 such that an Order of Possession was no longer required.

Issues to be Decided

1. Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to monetary relief?
2. What should happen with the Tenants' security deposit?

Background and Evidence

S.S. testified that the tenancy began in approximately September of 2014 under a former management company. She stated that the tenancy under the management company with whom she is employed began October 1, 2015. Monthly rent was payable in the amount of \$1,000.00.

D.H. testified that a security deposit in the amount of \$550.00 was paid at the start of the tenancy as the Tenant, B.R., resided in another rental unit in the building for which he paid \$1,100.00 per month. He stated that when the Tenant moved to the subject rental unit (in December 2014) the security deposit was simply transferred over to the new tenancy.

S.S. testified that the Tenant had difficulty paying the full amount of rent as and when due, and as of December 1, 2015 was \$2,350.00 in arrears. Documents submitted by the Landlord confirm this amount to be owing at the time the Notice was issued.

The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on December 1, 2015 indicating the amount of \$2,350.00 was due as of December 1, 2015 (the "Notice").

Based on the testimony of S.S. as well as the filed Proof of Service, I find that the Tenants were served with the Notice on December 3, 2015 by posting to the rental unit door. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later. Accordingly, I find pursuant to section 88 of the *Residential Tenancy Act*, that the Tenants were served with the Notice as of December 6, 2015.

The Notice informed the Tenants that the Notice would be cancelled if the outstanding rent was paid within five days of service, namely, December 11, 2015. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

S.S. testified that the Tenants failed to pay the outstanding rent and failed to file an application to dispute the Notice.

S.S. testified that the Tenants vacated the rental unit as of December 28, 2015.

S.S. testified that the rental unit was not rented until September 1, 2016. She confirmed that although the tenancy was for a fixed term, the Landlord only sought recovery of \$2,134.50 in outstanding rent as they did not wish to pursue loss of rent for the balance of the term and the original amount sought included a door which was repaired by the Tenant.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice. They also failed to attend the hearing to dispute the Landlord's claims.

Under section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenants have some authority under the *Act* to not pay rent. In this situation I find that the Tenants had no authority under the *Act* to not pay rent.

I find that the Landlord has established a total monetary claim of \$2,134.50 comprised of outstanding rent. Pursuant to sections 38 and 72 I Order that the Landlord retain the security deposit of \$550.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,584.50**. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Landlord is granted monetary compensation for the outstanding rent, may keep the security deposit in partial satisfaction of the claim, and is granted a monetary order for the balance due in the amount of **\$1,584.50**.

This decision is final and binding on the parties, except as otherwise provided under the *Act*, and 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 26, 2016

Residential Tenancy Branch