



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;
- authorization to recover the filing fee for this application from the tenant 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.

The tenant moved out on August 10, 2016, accordingly, the landlord withdrew her application for an order of possession.

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 August 1, 2016 with a monthly rent of \$2500.00 payable on the 1st day of each month. The tenancy was for a fixed term of one month. The tenant paid a security deposit of \$570.00 at the start of the tenancy which the landlord continues to hold. This security deposit was transferred from a previous tenancy between the parties

for a different rental unit. The landlord provided a move-out condition inspection report from the previous tenancy in which the tenant agreed to transfer the balance of \$570.00 to the new tenancy.

The landlord's claim is for outstanding rent in the amount of \$2500.00. The landlord testified that this includes unpaid rent for the month of August 2016. The landlord served the tenant with a Notice to End Tenancy for unpaid rent on August 9, 2016 and the tenant vacated the rental unit the following day. The landlord testified that she was not able to re-rent the unit earlier than September 1, 2016 as it was short notice and the end of the summer. The landlord withdrew its claim for cleaning fees as per the monetary order worksheet and acknowledged that it had also inadvertently added the security deposit rather than deducting it from the balance outstanding.

The tenant testified that the rental unit was not as advertised as it was not furnished and required many repairs. The tenant testified that she was out of town when she signed the lease and didn't have an opportunity to view the rental unit before signing. She was advised that the landlord that the unit would no longer be available if she didn't sign the lease immediately. The tenant submits that she vacated on August 10, 2016 so she should not be responsible for the full months' rent.

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.

I accept the landlord's uncontested evidence and find that the tenant was obligated to pay monthly rent in the amount of \$2500.00 on August 1, 2016 which she failed to pay. The tenant was obligated to pay this amount at the beginning of the lease regardless of the condition of the unit. The tenant did not have a right under the Act to deduct or withhold rent. I accept the landlord's testimony that she was unable to re-rent the unit prior to September 1, 2016 and find the landlord suffered a loss of rent for the full month of August 2016. I accept the landlord's claim for outstanding rent of \$2500.00.

As the landlord was 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 \$2600.00.

The landlord continues to hold a security deposit of \$570.00. 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 \$2030.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2030.00. 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: October 18, 2016

Residential Tenancy Branch