



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, 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 and for damage to the unit 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 tenant and landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed receipt of the landlord's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the application.

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 and damage to the rental unit?

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

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

Background and Evidence

The tenant rented the basement suite of the home, on May 1, 2014. Rent in the amount of \$650.00 is payable on the first of each month. The tenant did not remit a security deposit to the landlord. The tenant continues to reside in the rental unit.

The tenant confirms receipt of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") dated August 16, 2016. The notice indicates an effective move-out-date of August 30, 2016.

The landlord seeks a monetary order of \$1,950.00 for unpaid rent from June 2016 to August 2016. The landlord claimed that the tenant has not paid any rent for the above three months.

The landlord testified that he has not accessed the rental unit to determine the extent of the damages and therefore is uncertain of the monetary amount.

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

The tenant contended that she paid \$650.00 cash to the landlord's wife, at the landlord's residence each month. The tenant presented a witness that testified he accompanied the tenant each month to the landlord's residence to pay cash.

Analysis

Section 26 of the *Act* requires the tenant to pay rent when it is due under the tenancy agreement, which is the 1st day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* (the "*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Although the tenant argued that rent was paid, the tenant provided no specific dates or documentary evidence to show rent was in fact paid. I found the tenant's witness lacked credibility; he was vague, as he did not provide specific dates or times rent was paid.

I find that the landlord proved that the current rent for this unit is \$650.00. I find the landlord provided evidence that the tenant failed to pay full rent from June 2016 to August 2016. Therefore, I find that the landlord is entitled to \$1,950.00 in rent.

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities, the tenant 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 tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective 10 Day Notice in accordance with section 52 of the *Act*. As the tenant did not pay the overdue rent or file an application to dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ended, 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*.

I find the landlord's claim to damages premature as the tenant has not vacated the rental unit and the landlord cannot specify an amount. For this reason I dismiss the landlord's application for damages with leave to reapply. In relation to the landlord's application to retain the security deposit, I find in the absence of the landlord having received a security deposit from the tenant, the landlord cannot retain a security deposit. Therefore this portion of the landlord's application is dismissed without leave to reapply.

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 \$2,050.00 against the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,050.00 against the tenant.

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

The landlord's claim for damages is dismissed with leave to reapply.

The landlord's claim to retain the security deposit is dismissed without leave to reapply.

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: December 01, 2016

Residential Tenancy Branch