



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 tenant did not attend this hearing. Landlord RD and landlord CN attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

At the outset of the hearing the landlords testified that the tenant vacated the rental unit on October 14, 2016. Consequently, the landlords are no longer seeking an order of possession and this portion of the landlords' application is dismissed without leave to reapply.

Landlord RD testified that on October 20, 2016 she forwarded the landlord's application for dispute resolution hearing package via registered mail to a forwarding address provided by the tenant. The landlord provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the application on October 25, 2016, the fifth day after its registered mailing.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

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

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

As per the submitted tenancy agreement and testimony of landlord RD, this tenancy began on August 1, 2016 on a fixed term. Rent in the amount of \$850.00 was payable on the first of each month. The tenant remitted \$425.00 for the security deposit at the start of the tenancy.

The landlords seek a monetary order of \$850.00 for unpaid rent for October 2016. The landlords claimed that the tenant did not pay any rent for October.

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

Analysis

Section 26 of the *Act* requires the tenant 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 a tenant who does 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.

I find that the landlords proved that the current rent for this unit is \$850.00. I find the landlords provided undisputed evidence that the tenant failed to pay rent for October 2016. Therefore, I find that the landlords are entitled to \$850.00 in rent.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the security deposit in the total amount of \$425.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$425.00. As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$525.00.

Conclusion

The landlords' application for an order of possession is dismissed without leave to reapply.

I issue a monetary order in the landlords' favour in the amount of \$525.00 against the tenant.

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 12, 2016

Residential Tenancy Branch