



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPC MND 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 and cause pursuant to section 55;
- a monetary order for unpaid rent and damages 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 pursuant to section 72.

The hearing was conducted by conference call. The tenants did not attend this hearing, although I waited until 9:25 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on December 31, 2016, copies of the Application for Dispute Resolution and Notice of Hearing were sent to both the tenants by registered mail. The landlord provided a registered mail tracking number in support of service.

Based on the above evidence, I am satisfied that the tenants were deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenants.

The landlord testified the tenants vacated the rental unit on January 5, 2017, accordingly, the landlord withdrew her application for an order of possession.

Issues

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

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 April 28, 2016 with a monthly rent of \$1200.00 payable on the 1st day of each month. The tenants paid a security deposit of \$600.00 at the start of the tenancy which the landlord continues to hold.

The landlord's claim is for outstanding rent in the amount of \$5000.00. The landlord testified that this includes unpaid rent for the months of October 2016 to January 2017. The landlord testified that the tenants failed to pay rent for this period. As the tenants did not vacate until January 5, 2017 and left the rental unit damaged, the landlord testified she was not able to re-rent the unit for January 2017. The landlord did not provide any particulars for the claim for damages as the tenancy had not yet ended as the time of the application.

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 tenants were obligated to pay monthly rent in the amount of \$1200.00 but failed to pay rent for the period of October 2016 to January 2017. I accept the landlord's claim for outstanding rent and loss of rent in the amount of \$5000.00.

The landlord's application for a monetary order for damages to the rental unit is dismissed with leave to reapply as the landlord did not provide any particulars for this aspect of the claim as required by section 59(2)b of the Act.

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 \$5100.00.

The landlord continues to hold a security deposit of \$600.00. 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 \$4500.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$4500.00. Should the tenants 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: January 23, 2017

Residential Tenancy Branch