



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AWM ALLIA

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 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 provide sworn testimony, present evidence and to make submissions.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord's agent testified that the tenant had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent in the amount of \$1150.00 that was payable on February 1, 2017. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the request for an amendment.

Further, in a decision dated February 3, 2017, the tenant's application to cancel the same 10 Day Notice subject to this dispute was dismissed and the landlord was granted an order of possession. Accordingly, the landlord's agent withdrew his application for an order of possession.

In the previous decision, the Arbitrator found that the tenants' son was incorrectly named as an applicant versus an occupant and exercised his authority to remove his name for the style of cause. Similarly, in this application I exercise my authority to remove the tenants' son from the style of cause of this decision.

Issues

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

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

Background and Evidence

The tenancy began on December 1, 2015 with a monthly rent of \$1150.00 payable on the 1st day of each month. The tenant paid a security deposit of \$575.00 at the start of the tenancy which the landlord continues to hold.

The landlord's claim is for outstanding rent in the amount of \$4600.00. The landlord's agent testified that this includes unpaid rent for the period of November 2016 to February 2017.

The tenant does not dispute the outstanding amount as claimed by the landlord. Rather, the tenant argues the property management company representing the landlord has not provided any written notice showing that it is authorized to collect payment on behalf of the landlord.

The landlord's agent argued that the name of the landlord appearing on the 10 Day Notice is the same as per the lease signed by the tenant. The landlord's agent argues the tenant was instructed he could make rent cheques payable to either the property management company or the landlord as he had done so in the past. The landlord's agent testified that the property management company has been retained by the landlord and all tenants were notified when this occurred.

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.

The tenant is not disputing the outstanding rent in the amount of \$4600.00. I accept the testimony of the landlord's agent that he is a representative of the property management company retained by the landlord.

I accept the landlord's claim for outstanding rent of \$4600.00.

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 \$4700.00.

The landlord continues to hold a security deposit of \$575.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$4125.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$4125.00. 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: February 22, 2017

Residential Tenancy Branch

