



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 was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities, an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other, and all evidence provided has been considered. No issues with respect to service or delivery of documents or evidence were raised.

At the outset of the hearing, the parties advised that I heard a previous dispute wherein the parties settled. The landlord was granted an Order of Possession effective February 2, 2017 at 1:00 p.m. and the tenancy ended at that time. Therefore, the landlord's application for an Order of Possession today is withdrawn. The tenant's application for a monetary order for the cost of emergency repairs was dismissed with leave to reapply.

Issue(s) to be Decided

The issues remaining to be decided in this dispute are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on September 1, 2015, although the tenant moved in a few days earlier. The tenant vacated the rental property on February 2, 2017 as per the settlement of the dispute heard on February 1, 2017.

Rent in the amount of \$700.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling, and a copy of the tenancy agreement has been provided.

The tenant failed to pay rent for the month of January, 2017, and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. It is dated January 2, 2017 and contains an effective date of vacancy of January 12, 2017 for unpaid rent in the amount of \$700.00 that was due on January 1, 2017. The tenant has not paid any rent for January to date.

The landlord further testified that a move-in condition inspection report was completed at the beginning of the tenancy. However, at the hearing on February 1, 2017 the parties had agreed to attend at the rental unit for the move-out condition inspection report on February 2, 2017 at 7:30 p.m., but the tenant didn't show up. The landlord completed the inspection in the absence of the tenant. The tenant has not provided the landlord with a forwarding address.

The rental unit has not yet been re-rented. The landlord seeks an order permitting the landlord to keep the \$350.00 security deposit and a monetary order for the rent for January, 2017, as well as recovery of the \$100.00 filing fee.

The tenant testified that the furnace in the rental unit was not working, and after discussions with the landlord about it, the tenant had a service technician attend who lit the pilot light and said that the furnace needed repair. The tenant paid \$160.00 for it and the landlord has refused to reimburse the tenant saying that the tenant caused it to break down.

The tenant had to move out on very short notice, and has left numerous items in the garage that he can't access. Such items include a lawn mower, a snow blower, tools, winter tires, stereo and speakers, among other items. The tenant agrees that January's

rent has not been paid and consents to the landlord keeping the security deposit, but not to any further rent.

The tenant was granted leave to reapply for monetary compensation at the hearing on February 1, 2017 but the tenant has not made the application.

Analysis

I make no findings of fact or law with respect to the tenant's claim that the landlord owes the tenant any money or that any such debt should be set off from the landlord's claim for unpaid rent. The tenant has been granted leave to reapply and has not done so. The only issue before me is the landlord's claim for unpaid rent.

The *Residential Tenancy Act* states that a tenant must pay rent even if the landlord breaches the *Act* or the tenancy agreement. The parties agree that January's rent has not been paid, and therefore, I find that the landlord has established the claim.

A landlord may not keep a security deposit unless the tenant agrees in writing or unless ordered at Arbitration. Any order made at Arbitration for a landlord to keep a security deposit or pet damage deposit is set off from monies owed to a landlord. In this case, having found that the landlord is owed rent, I order the landlord to keep the \$350.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference of \$350.00.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord does not dispute that numerous items remain at the rental unit or in the garage. The landlord may not withhold those items, and I order that they be released to the tenant at a mutually agreed date and time.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed as withdrawn.

I hereby order the landlord to keep the \$350.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$450.00.

I order that the tenant's personal items be released to the tenant at a mutually agreed date and time.

This order is final and binding and may be enforced.

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 15, 2017

Residential Tenancy Branch