



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPITAL REGION HOUSING CORPORATION and
Tenant name suppressed to protect privacy

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 hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 10:40 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 10:30 a.m. The landlord's agent and witness attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and make submissions.

The landlord's agent testified that on March 24, 2017, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant 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 tenant was 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 tenant.

The landlord's agent testified that they discovered the rental unit abandoned on March 30, 2017 and took possession on this date; accordingly, the landlord withdrew its application for an order of possession.

Issues

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

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 October 1, 2005 with a current subsidized monthly rent of \$265.00 payable on the 1st day of each month. The tenant paid a security deposit of \$350.00 at the start of the tenancy which the landlord continues to hold.

The landlord's claim is for outstanding rent in the amount of \$795.00. The landlord's agent testified that this includes unpaid rent for the month of March 2017 plus loss of rent for the months of April and May 2017. The landlord's agent further testified that she did not make any attempts to re-rent the unit as she was waiting for the outcome of the hearing to offer the unit to a new tenant beginning in June 2017.

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 tenant was obligated to pay monthly rent in the amount of \$265.00 but failed to pay rent for the month of March 2017. I accept the landlord's claim for outstanding rent of \$265.00.

The landlord's claim for loss of rent is dismissed as the landlord did not make any attempts to re-rent the rental unit in order to mitigate any potential loss. The landlord's agent testified that they discovered the rental unit abandoned on March 30, 2017 and took possession of the unit on this date. The landlord did not have to wait for this hearing and could have attempted to re-rent the rental unit beginning April 1, 2017. Although it is unlikely that the landlord would have been able to re-rent the unit beginning April 1, 2017 the landlord could have at least made attempts in order to mitigate any potential loss.

As the landlord was only partly successful in this application, I find that the landlord is entitled to recover one half the \$100.00 filing fee paid for this application for a total monetary award of \$315.00 (\$265.00 + 50.00).

The landlord continues to hold a security deposit of \$350.00. I allow the landlord to retain \$315.00 from the security deposit in full satisfaction of the monetary award pursuant to section 38 of the Act.

Conclusion

The landlord is entitled to a total monetary award in the amount of \$315.00. The landlord may retain \$315.00 from the \$350.00 security deposit in full satisfaction of the monetary award pursuant to section 38 of the Act.

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: April 28, 2017

Residential Tenancy Branch