



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a Monetary Order for unpaid rent pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The co-landlord MSB (the "landlord") attended on behalf of both landlords. The co-tenant JAA (the "tenant") attended on behalf of both co-tenants.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 10 Day Notices, the landlord's initial application for direct request and the interim decision adjourning the direct request proceeding to a participatory hearing. The tenant confirmed receipt of the landlord's materials. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with copies of the landlord's notice of participatory hearing and materials.

At the outset of the hearing, the parties testified that the tenants have vacated the rental unit and an Order of Possession is no longer being sought. The portion of the landlord's application seeking an Order of Possession is withdrawn.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

This fixed term tenancy began September, 2016. The written tenancy agreement, submitted into written evidence, provides that the monthly rent is \$1,550.00 payable on the first of the month. In addition the tenancy agreement states that the tenant is responsible for paying 40% of the utilities. A security deposit of \$700.00 was paid by the tenants at the start of the tenancy and is still held by the landlord.

The landlord testified that the rent and utilities were consolidated during the tenancy and from March, 2017 onwards, instead of receiving the utility bill and calculating 40% the parties agreed that the tenant would pay a monthly rent of \$1,600.00 which includes the utilities. The landlord testified that the tenant last made a payment of \$200.00 on April 26, 2017. The landlord said that he has received no further payment from the tenant. The landlord said that the rental arrear for this tenancy is \$3,000.00 as the tenant failed to pay \$1,400.00 for April, 2017 and \$1,600.00 for May, 2017. The tenant confirmed that he has not made any rental payment after April 26, 2017. The tenant testified that the landlord failed to provide receipts throughout the tenancy and in addition the tenant performed work around the rental unit. The tenant disagrees with the landlord's calculation of rental arrears.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find the landlord has provided insufficient evidence of the full amount of rental loss claimed. While I accept the testimony of the parties that the tenant has not made any rent payment since paying \$200.00 on April 26, 2017, I find there is insufficient evidence in support of the landlord's claim that the monthly rent was increased to \$1,600.00. I accept the written evidence as provided in the tenancy agreement that the monthly rent is \$1,550.00. Therefore, I find that the arrears for this tenancy is \$2,900.00.

I find there is insufficient evidence in support of the tenant's position that there have been overpayments and miscalculations earlier in the tenancy which should have allowed the tenant to withhold the rent for April and May, 2017.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$700.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The portion of the application seeking an Order of Possession is withdrawn.

I issue a monetary order in the landlord's favour in the amount of \$2,200.00 under the following terms, which allows the landlord to recover unpaid rent:

Item	Amount
Unpaid Rent April	\$1,350.00
Unpaid Rent May	\$1,550.00
Less Security Deposit	-\$700.00
Total Monetary Order	\$2,200.00

The tenants must be served with this Order as soon as possible. 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: July 4, 2017

Residential Tenancy Branch