



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR
 MT, CNC, CNR, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities. The tenants have applied for more time than prescribed to dispute a notice to end the tenancy; for an order cancelling a notice to end the tenancy for cause; for an order cancelling a notice to end the tenancy for unpaid rent or utilities; and to recover the filing fee from the landlord for the cost of the application.

The landlord attended the hearing and gave affirmed testimony, however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants joined the call. Therefore, I dismiss the tenants' application in its entirety.

The landlord advised that the tenants moved out of the rental unit on or about June 15, 2017 and the landlord has moved in, and therefore the application for an Order of Possession is withdrawn.

The landlord testified that the Landlord's Application for Dispute Resolution was served on the tenants personally, individually within the time required by the *Act*. Considering the tenants had an application scheduled to be heard with the landlord's application, I accept that testimony, and I find that the tenants have been served in accordance with the *Residential Tenancy Act*, and the hearing commenced in the absence of the tenants.

All evidence of the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenants for unpaid rent?

Background and Evidence

The landlord testified that this fixed term tenancy began on July 1, 2016 and was to expire on April 30, 2017 at which time the tenancy ends, and the tenants must move out, but that clause is not initialled by either party. The tenants actually moved out on June 15, 2017. Rent in the amount of \$1,400.00 per month was payable on the 1st day of each month. The rental unit is a single family dwelling and a copy of the tenancy agreement has been provided as evidence for this hearing.

At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$700.00 which has been applied to rent. The landlord also collected the first and last months rent at the beginning of the tenancy, the latter of which was applied to unpaid rent.

The landlord further testified that the tenants are currently in arrears of rent the sum of \$1,400.00, being half of May's rent and half of June's rent. On May 15, 2017 the landlord served one of the tenants personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. It is dated May 15, 2017 and contains an effective date of vacancy of May 25, 2017 for unpaid rent in the amount of \$1,400.00 that was due on May 1, 2017, and has added in handwriting, "Incl. \$700.00 in arrears which was taken from security dep." The tenants have provided a copy of a receipt dated May 8, 2017 for the payment of \$700.00 for rent till the middle of May.

The landlord moved back into the rental unit on June 15, 2017, the same day the tenants moved out.

The landlord claims \$1,400.00 and recovery of the \$100.00 filing fee.

Analysis

Firstly, a landlord must not collect the first and last month's rent at the beginning of a tenancy and a security deposit. A landlord may only collect the first month's rent and a security deposit that is no more than half a month's rent and a pet damage deposit that is no more than half a month's rent if the tenant has a pet. In this case, the landlord testified that the tenants paid a security deposit in the amount of \$700.00 and applied it to unpaid rent. The landlord also collected the last month's rent at the beginning of the tenancy and testified that it was applied to unpaid rent.

The tenancy ended June 15, 2017 and the landlord moved into the rental unit, and testified that the tenants owe half of May's rent and half of June's rent. The notice to

end the tenancy states that the tenants, as of its date of issue on May 15, 2017 owed \$1,400.00 that was due on May 1, 2017 including \$700.00 of arrears that were “taken from the security deposit”. The tenants paid \$700.00 on May 8, 2017 and the landlord’s Direct Request Worksheet specifies a claim of \$1,400.00 for May 15 rent.

I accept the undisputed testimony of the landlord that the tenants only paid, even considering the deposit paid and applied to rent and considering the last month’s rent paid at the beginning of the tenancy, the tenants still owe \$700.00 for May. The tenants didn’t move out until June 15, 2017, and I find that the tenants owe \$700.00 for June, 2017.

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

Conclusion

For the reasons set out above, the tenants’ application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,500.00.

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: July 20, 2017

Residential Tenancy Branch