



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC 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, monetary loss, or money owed, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing with their interpreters, and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The tenant, JM, confirmed receipt of the landlord's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the tenants were duly served with the landlord's application.

The landlord testified that he did not serve the tenants with his evidence. Accordingly the landlord's written evidence is excluded for this hearing and will not be considered in this decision. The tenants did not submit any written evidence for this hearing.

At the beginning of the hearing the tenant, JM, indicated that they had moved out on August 1, 2017. Both parties also confirmed that a security deposit was never paid for this tenancy. As this tenancy has now come to an end, and as no security deposit was ever paid by the tenants, the landlord's application for an Order of Possession and for the retention of the security deposit was withdrawn.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage to the rental unit?

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

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began in June 2016. Monthly rent in the amount of \$1,100.00 was payable on the first day of each month. No written tenancy agreement exists.

The landlord issued the 10 Day Notice on May 31, 2017 as the tenants failed to pay the rent for May 2017. The landlord testified that this 10 Day Notice was served two ways: by posting it on the tenants' door, and also by personally serving the notice on the tenants. The landlord testified that he had submitted photos in evidence to support this, but as the landlord did not serve this evidence on the tenants, the landlord's written evidence was excluded for the purposes of this hearing. As the tenants had moved out on August 1, 2017, no Order of Possession is required. The landlord testified that the tenants failed to pay rent of \$1,100.00 for the months of May, June, and July 2017. The landlord seeks a monetary order of \$3,300.00, plus \$100.00 for recovery of the filing fee for this application.

The tenants dispute having received any notices from the landlord for the end of this tenancy. The tenants also dispute that rent was set at \$1,100.00 per month, stating that monthly rent was set at \$800.00, which was paid up until the end of this tenancy. The tenants testified that the 10 Day Notice was issued to them because the landlord wanted to increase the rent on May 30, 2017 to \$1,100.00. The tenants testified that this request was oral, and no notices of rent increases were issued in writing.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) 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 have considered the oral submissions of both parties, and while the landlord testified that the tenants failed to pay rent as agreed to, the landlord did not provide sufficient evidence to establish that the tenants failed to comply with Section 26(1) of the *Act* as stated above.

The tenants dispute the testimony of the landlord, stating that monthly rent was set at \$800.00, and paid in full. The landlord testified that the tenant owed \$3,300.00 in outstanding rent, which was set at \$1,100.00. The landlord did not provide any written agreements, correspondence, witness testimony, account statements, or receipts to support that monthly rent was set at \$1,100.00 per month.

In the absence of any witness testimony, supporting statements, or receipts, I find there is insufficient evidence to support the landlord's claim that the tenants did not pay rent as required by the act, regulation, or tenancy agreement. On this basis, I dismiss the landlord's entire application.

Conclusion

As the tenants had moved out on August 1, 2017, the landlord's application for an Order of Possession was withdrawn. As both parties agreed that no security deposit was ever collected or paid, the landlord's application to retain the security deposit was withdrawn.

The remainder of the landlord's application is dismissed.

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: August 8, 2017

Residential Tenancy Branch