



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38;
4. A Monetary Order for compensation - Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord does not know when the tenancy originally started as it commenced prior to the Landlord purchasing the unit with possession on April 1, 2017. The Tenant states that the tenancy started about 4 years ago. The Landlord states that the previous owner and landlord did not maintain a proper tenancy records and that there is no copy

of a tenancy agreement for this unit. The Landlord states that a one page rent roll for March 2017 shows the Tenant paid \$772.50 as rent for March 2017 and the Landlord continued with this rental amount for April 2017. The Landlord states that rent is payable on the first day of each month. The Tenant states that rent was \$750.00 per month until purchased by the current landlord and that the rent was then increased to \$772.50 for April 2017. The Tenant provided no documentary evidence of previous rents paid.

The Landlord states that the Tenant paid a security deposit of \$375.00 and that there is no record of a pet deposit. The Landlord states that the former landlord did allow pets and agrees that the Tenants do have pets. The Tenant states that in addition to the security deposit the Tenants paid a pet deposit of \$250.00 for having 2 cats. The Tenant states that shortly after renting the unit, the agent who collected rents and deposits was fired. The Tenant states that he asked the current Landlord several times to contact the previous manager to confirm the rents and deposits but that the Landlord never did. The Landlord states that they did their best to obtain details of the tenancy.

The Landlord states that the Tenants owed arrears of \$295.00 for May 2017 and failed to pay rent for June 2017.

The Parties agree to the following facts: On June 8, 2017 the Landlord served the Tenants with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The Tenants paid \$300.00 towards the rental arrears on June 26, 2017. The Tenants did not pay rent for July 2017 and on August 1, 2017 the Tenant paid \$1,000.00. The Tenant did not pay rent for September or October 2017. The Landlord provided receipts indicating rental monies were accepted by the Landlord in June and August 2017 for use and occupancy only. The Tenant did not dispute the Notice and has not moved out of the unit.

The Landlord agrees to an order of possession effective October 31, 2017.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Based on the undisputed evidence that the Tenants received the Notice and did not dispute the Notice I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement whether oral or written. The Tenant did not dispute the Notice to raise any issues with the amount of rent indicated as unpaid on the Notice. Given the Landlord's rent roll evidence for March 2017 I find on a balance of probabilities that the Tenant was paying \$772.50 for monthly rent. Based on the Landlord's undisputed evidence I find that this rent was payable on the first day of each month. Based on the undisputed evidence of rental arrears and payments I find that the Tenant has failed to pay rent in the total amount of **\$2,857.50**. As the Landlord has been successful with its claims I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,957.50**.

Given the undisputed evidence of poor record keeping by the previous landlord I accept the Tenant's straightforward evidence of having paid a pet deposit of \$250.00 in addition to the security deposit of \$375.00. Deducting these combined amounts plus zero interest of **\$625.00** from the Landlord entitlement of \$2,957.50 leaves **\$2,332.50** owed to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on October 31, 2017.

I order that the Landlord retain the **deposits** and interest of \$625.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$2,332.50**. If necessary, this order may be filed in the Small Claims 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: October 23, 2017

Residential Tenancy Branch