



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pinnacle International Realty Group II
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing, via teleconference, was held on November 27, 2017. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- 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,
- to recover the filing fee from the tenants for the cost of this application.

The landlord's agent (the "agent") attended the hearing and provided affirmed testimony. The tenants did not attend the hearing.

The agent testified that the tenants moved out of the rental unit at the end of September 2017. The agent further testified that before they moved out, she sent each tenant a copy of the Application for Dispute Resolution and the Notice of Hearing by registered mail on September 19, 2017. I find the tenants received this package on September 24, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The agent provided some documentary evidence to the Tenancy Branch on November 17, 2017, in relation to a monetary claim for damages. However, the agent did not apply for consideration of this issue and there was no amendment filed to allow for consideration of this issue; it will require a separate application. Further, this evidence was submitted contrary to the rules of procedure. Residential Tenancy Branch Rule of Procedure 3.14 requires that evidence to be relied upon at a hearing must be received

by the Residential Tenancy Branch and the respondent not less than 14 days before the hearing. In light of all of this, I will not be considering or addressing this portion of the agent's evidence/claim any further. The agent is granted leave to reapply for a monetary claim for damages, given that this issue was not considered in this hearing.

Also, the agent stated that she no longer requires an order of possession, given that the tenants moved out in September, and she requested that her application be amended to reflect this. In consideration this, I hereby amend the agent's application accordingly.

The agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
3. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The agent testified that monthly rent is \$1,214.00 and is due on the first of the month. The agent testified that the landlord currently holds a security deposit of \$590.00. The agent also stated that the tenants have failed to pay any rent for the month of September 2017.

The agent stated that she would like to retain the security deposit to offset the rent owed for September 2017. The agent testified that she posted the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice) to the tenants' front door on September 2, 2017. Service of this document was witnessed by a third party. The agent testified that, as per the 10 Day Notice, the tenants owed \$1,214.00 in rent at the time the notice was issued.

Analysis

Based on the unchallenged affirmed testimony, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

With respect to the agent's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from her undisputed evidence and testimony before me to demonstrate that the tenants owe and have failed to pay \$1,214.00 in rent for September of 2017.

The agent requested that they be able to retain the security deposit of \$590.00 to offset the amount of rent owed for September 2017, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was substantially successful in this hearing, I order the tenants to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the landlord, be kept and used to offset the amount of rent still owed by the tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Unpaid rent: September of 2017	\$1,214.00
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$590.00)
TOTAL:	\$724.00

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$724.00** comprised of rent owed. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: November 27, 2017

Residential Tenancy Branch