



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR MNDC MNSD FF CNR ERP RP

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent and loss of rent pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence.

At the outset of the hearing, the landlord advised that the tenants had vacated the rental unit as of December 16, 2017; therefore the only outstanding issue is the landlord’s monetary application for unpaid rent.

Preliminary Issue – Parties named in application

The tenants confirmed service of the landlord’s application but testified that only M.P. and M.T.R signed a tenancy agreement with the landlord. R.S.P was only an occupant

whol moved in June 2017 and did not sign any agreement with the landlord. E.E. is friends with R.S.P and testified that she did not reside at the rental unit and did not sign any tenancy agreement either.

The landlord testified that on August 25, 2017 all of the named parties signed a document stating they would vacate the rental unit. All the named parties were named as tenants in this document. A copy of this document was not submitted as evidence. The landlord acknowledged that all though all of the named parties were listed on the first page of the tenancy agreement, only M.P. and M.T.R signed the tenancy agreement.

Based on the evidence before me, I find that only M.P. and M.T.R. are tenants who entered into a tenancy agreement with the landlord. Accordingly, any monetary order awarded to the landlord will be enforceable only against tenants M.P. and M.T.R.

Issues

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The tenancy began on December 01, 2016 with a monthly rent of \$2000.00 payable on the 1st day of each month. The tenants paid a security deposit of \$1000.00 at the start of the tenancy which the landlord continues to hold.

The landlord's monetary claim is for outstanding rent in the amount of \$11,000.00. The landlord testified that this includes unpaid rent for the period of June 2017 to December 2017. The landlord submitted a statement of account detailing the rent payable for each month and the amount paid by the tenants each month. According to this statement, the landlord only received cheques in the amount of \$500.00 per month from the Ministry of Social Services for the months of June 2017 through to October 2017. In June 2017, the landlord also received \$500.00 in cash. The landlord testified that no rent was paid in November and December 2017.

The tenants disputed the outstanding amount as claimed by the landlord. E.E. represented the tenants and testified that M.P. has receipts from the landlord for cash payments up until November 2017 and tenant M.T.R. had his Ministry cheques

deposited directly to the landlord's account. E.E. also argued that the tenants had an agreement with the landlord that the last two months were supposed to be free of rent in exchange of work done on the rental unit.

The landlord replied that the payment of Ministry cheques were accounted for in the statement of account and denied any cash payments except for the one collected for June 2017.

Analysis

Section 26 of the Act requires that 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 find that the tenants were obligated to pay monthly rent in the amount of \$2000.00 but failed to pay rent in full for the period of June 2017 to December 2017. The landlord submitted a statement of account detailing the rent payments received each month. The tenants did not submit any evidence or receipts of the alleged cash payments made to the landlord. The Ministry cheques alluded to by the tenants have been accounted for in the landlord's statement of account. The tenants provided insufficient evidence in support of their argument that they had an agreement with the landlord for free rent for the last two months. As rent is payable on the 1st of each as per the tenancy agreement, I find the tenants are responsible for the full month of December rent even though they vacated on December 16, 2017. I find the landlord still suffered a loss of rent for this full month. I accept the landlord's claim for outstanding rent of \$11,000.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$11,100.00.

The landlord continues to hold a security deposit of \$1000.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$10,100.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$10,100.00. 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: January 10, 2018

Residential Tenancy Branch