



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened in response to an application filed by the landlord seeking:

1. An Order of Possession for unpaid rent;
2. A monetary Order for recovery of the unpaid rent;
3. A monetary Order for compensation for damage or loss; and
4. Recovery of the filing fee paid for this application.

In total the landlord claims \$3,365.00

The landlord testified that a 10 day notice to End Tenancy was served on the tenants on November 4, 2010 however the landlord did not provide that Notice in evidence and I am therefore not satisfied that the proper Notice was served on the tenants.

Only the landlord appeared at the hearing. The landlord testified that she served the Application for Dispute Resolution hearing package on the tenants by service one of the tenants, BM, in person on December 10, 2010. I accept the testimony of the landlord and find that the tenants have been duly deemed served with the Notice of Hearing although they did not appear.

The landlord gave evidence under oath.

Issues(s) to be Decided

Is the landlord entitled to the Orders sought?

Background and Evidence

In her Application the landlord states that she is seeking \$3,365.00 which she states is for:

...December rent: \$1900 and November rent: \$440 and for late payment for October, November and December: $3 \times \$25 = \75 They recently got a kitten: \$950 for pet deposit. Total \$3,365.

(reproduced as written)

At the hearing of this matter the landlord testified that this tenancy began on September 1, 2010 and that rent was fixed at \$1,900.00 per month. The landlord says the tenants did not pay a security deposit. The landlord provided the following accounting of rent due and payments made:

Date	Amount Due	Amount Paid	Balance
September 1	\$1,900.00	\$1,900.00	0.00
October 1	1,900.00		1,900.00
October 11		1,220.00	680.00
November 1	1,900.00	0	2,580.00
November 3		3,090.00	510.00 Credit
December 1	1,900.00		1,390.00
December 16		2,100.00	710.00 Credit

Analysis

The landlord bears the burden of proving her claims.

With respect to the request for an Order of Possession, as stated above, the 10 day Notice to End Tenancy for unpaid rent that the landlord says she served on the tenants

was not submitted in evidence. I am therefore not satisfied as to the content of the Notice and I decline to grant an Order of Possession based on that Notice.

With regard to the landlord's request for a monetary Order, her testimony contradicts the claim she presented in her Application for Dispute Resolution. Her testimony shows that that the tenants have actually overpaid their rent over the course of this tenancy by \$710.00. I am therefore not satisfied that there are rental arrears owing.

The landlord testified that a written tenancy agreement does exist but no such agreement was submitted in evidence. At the hearing of this matter the landlord testified that the tenants did not pay a security deposit, however her testimony regarding the sums paid by the tenants over the course of this tenancy show that the landlord now holds a \$710.00 credit in the tenants' favour. That sum may have been given as a security deposit, or at least as part of a deposit, which could have been as much as \$950.00 that is if I accept the landlord's testimony that the rent was fixed at \$1,900.00 per month, although I have no other evidence, such as a tenancy agreement to support such a finding and, given the contradictions between the landlord's claim and her testimony I am not satisfied that the rent was \$1,900.00 per month.

Further, while the landlord did make a claim for a pet deposit, she did not make a claim for a security deposit. I find that it is reasonable and probable that she did not claim a security deposit because she already held the deposit, or at least part of it, in the sum of \$710.00.

With respect to her claim for a pet deposit, the landlord says the tenant's have acquired a kitten and have not paid a pet deposit. However she has provided no other evidence to support this claim. Given that what the landlord said in her Application for Dispute Resolution in terms of the rental arrears contradicted what she stated under oath at the hearing I am not satisfied with the landlord's testimony on its own with respect to the pet and I therefore decline to award the landlord a pet deposit.

The landlord also claims three late rent payment fees each in the sum of \$25.00 for a total of \$75.00. However as the written tenancy agreement the landlord says she has was not submitted into evidence I am not satisfied that the tenants agreed to pay late rental payment fees. Therefore this claim is dismissed.

As the landlord has been unsuccessful in her claims, I decline to award recovery of the filing fee.

Conclusion

The landlord's claims, in their entirety, are dismissed.