



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with the landlord's application for an Order of Possession and Monetary Order for unpaid rent and/or utilities, loss of rent, and authority to retain the security deposit. The landlord could not provide accurate information with respect to service of the Application for Dispute Resolution; however, the male tenant confirmed that he and the co-tenant were served with the landlord's hearing documents. Based upon the male tenant's testimony I was satisfied the tenants were served with the hearing documents and I proceeded to hear from the parties with respect to the landlord's application.

At the commencement of the hearing I heard the tenants have since vacated the rental unit. Accordingly, an Order of Possession is no longer required and I do not provide one with this decision.

At the commencement of the hearing I heard that the landlord has recovered the unpaid rent and utilities owed for April 2012 after filing the application. Therefore, the remainder of the hearing dealt with the landlord's claim for unpaid/loss of rent and utilities for the month of May 2012 and retention of the security deposit.

Issue(s) to be Decided

Is the landlord entitled to unpaid or loss of rent and utilities for May 2012?
Is the landlord authorized to retain the security deposit?

Background and Evidence

Although I was not provided a copy of the tenancy agreement, the parties provided consistent testimony as to the following information. The tenancy commenced June 1, 2011 for a fixed term of one or two years. The tenants paid a \$1,750.00 security deposit. The tenants were required to pay \$3,500.00 for rent plus \$220.00 for utilities for a total payment of \$3,720.00 on the 1st day of every month.

The tenant's failed to pay rent when due for April 2012 and a 10 Day Notice to End Tenancy for Unpaid Rent was issued by the landlord and placed in the tenants' mailbox on April 23, 2012. The tenants vacated the rental unit May 7, 2012.

By way of this application, the landlord is seeking to recover unpaid or loss of rent and utilities for the month of May 2012 in the amount of \$3,720.00. The landlord verbally requested I amend the application to include loss of rent to June 15, 2012. I did not permit the amendment and informed the landlord of her right to make a subsequent application.

The tenant was of the position that since they vacated on May 7, 2012, pursuant to the 10 Day Notice, they do not owe rent for days beyond May 7, 2012. The tenant also attempted to introduce evidence with respect to deficiencies with the rental unit; however, the tenant acknowledged that they did not previously acquired the landlord's consent for a rent reduction or the authority of the director to reduce rent payable. Nor had the tenants filed a cross Application for Dispute Resolution seeking compensation for deficiencies. Accordingly, I did not hear or consider the tenant's submission with respect to deficiencies and I informed the tenant of their right to make their own application if they wish to pursue compensation against the landlord.

Analysis

The Act requires a tenant to pay rent when due, in accordance with the terms of their tenancy agreement. In this case, the tenants were required to pay \$3,720.00 on the 1st day of every month in accordance with their tenancy agreement. Based upon the evidence before me, I accept that the tenancy ended May 7, 2012 pursuant to the tenant's failure to pay rent for April 2012 when due and the issuance of a 10 Day Notice. Since the tenancy was still in effect on May 1, 2012 I find the tenants were required to pay \$3,720.00 on May 1, 2012 in accordance with their tenancy agreement and the Act.

The tenancy agreement requires the tenants to pay rent on a monthly basis, not a daily basis, and the tenants' breach of the tenancy agreement is not a basis under the Act to pro-rate the rent owed for May 2012. Therefore, I grant the landlord's request to recover unpaid rent and utilities for May 2012 in the amount of \$3,720.00.

As I am satisfied rent for April and May was outstanding when this application was filed, putting the total claim over \$5,000.00, I award the \$100.00 filing fee to the landlord.

I grant the landlord's request to retain the security deposit in partial satisfaction of the rent owed by the tenants.

In light of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent/utilities for May 2012	\$ 3,720.00
Filing fee	100.00
Less: security deposit	<u>(1,750.00)</u>
Monetary Order	\$ 2,070.00

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$2,070.00 to serve upon the tenants.

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: May 24, 2012.

Residential Tenancy Branch