



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of this application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on April 25, 2012, neither of the tenants attended. The landlord provided evidence of having mailed the documents on that date and in that fashion, and I find that the tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on or about January 16, 2012, although the landlord's agent is not certain of the date. The tenants moved from the rental unit on or about April 30, 2012, although the landlord's agent is not certain of that date either. Rent in the amount of \$1,750.00 per month was payable in advance on the 1st day of each month. The landlord collected a security deposit from

the tenants in the amount of \$750.00 as well as a pet damage deposit in the amount of \$300.00, although the landlord's agent does not know the dates those deposits were paid. No move-in or move-out condition inspection reports were completed, and the tenants have not provided the landlord with a forwarding address in writing.

The landlord's agent also testified that another tenant lived in the rental unit and were removed by way of an Order of Possession for unpaid rent. After they moved, the landlord and these tenants made a verbal tenancy agreement.

The landlord's agent further testified that the tenants failed to pay rent when it was due for the month of April, 2012. The landlord caused a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to be served upon the tenants, a copy of which was provided for this hearing. The notice is dated April 11, 2012 and contains an expected date of vacancy of April 14, 2012. The notice states that the tenants failed to pay rent in the amount of \$1,750.00 that was due on April 1, 2012. The landlord also provided a Proof of Service document stating that the tenants were served with the notice by posting it to the tenants' door on April 11, 2012. The landlord's agent testified that the tenants moved from the rental unit and therefore the application for an Order of Possession is withdrawn.

The landlord's agent also testified that the tenants did not pay rent for the month of April, 2012 and the landlord claims \$1,750.00 for that month as well as \$1,750.00 for loss of revenue for the month of May, 2012. The rental unit was not advertised for rent, and a new tenant has been secured for June 1, 2012.

Analysis

In the circumstances, I find that the landlord is entitled to a monetary order for unpaid rent for the month of April, 2012. With respect to the landlord's application for a monetary order for loss of revenue for the month of May, 2012, I find that the landlord has failed to establish mitigation. The landlord's agent testified that the tenants were served with the notice to end tenancy on April 11, 2012, but the landlord's agent has no evidence or reliable testimony with respect to the date the tenants actually vacated the rental unit. The notice to end tenancy contains an effective date of April 14, 2012, and even though I find the effective date to be incorrect according to the *Act*, the landlord has not advertised the rental unit for rent, and assumingly would have been able to re-rent the rental unit for May 1, 2012 if the tenants had moved from the rental unit by the effective date of the notice if the landlord had advertised the rental unit for rent.

The *Residential Tenancy Act* states that a landlord may only claim against a pet damage deposit for damages caused by a pet, however, the *Act* also states that where

a tenant is ordered to pay an amount to a landlord, the amount may be deducted from any pet damage deposit or security deposit held in trust on behalf of the tenant, and I find it reasonable to make such an order.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

I order that the landlord keep the security deposit and pet damage deposit totalling \$1,050.00 in partial satisfaction of the claim, and I hereby grant a monetary order in favour of the landlord for the difference of \$750.00.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed as withdrawn.

I order the landlord to keep the security deposit and pet damage deposit in the amount of \$1,050.00 and I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$750.00.

This order is final and binding on the parties and may be enforced.

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 18, 2012.

Residential Tenancy Branch