



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OP MNR MNSD FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The named landlord called in and participated in the hearing. The tenant did not appear although he was personally served with the Application for Dispute Resolution and Notice of Hearing on June 29, 2016. The landlord testified that the tenant moved out of the rental unit on July 9, 2016. He did not return the keys and left a quantity of goods behind. The landlord testified that she no longer requires an order of possession.

Issues

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

Background and Evidence

This tenancy began in or about October, 2012. The rent is \$1,200.00 due in advance on the first day of each month. The tenant paid a security deposit of \$600.00 at the start of the tenancy. The landlord said that the tenant was responsible for utilities. The landlord did not provide a copy of a tenancy agreement. The landlord said that she lost the tenancy agreement. The landlord testified that the tenant did not pay rent for June, 2016 when it was due. On June 20, 2016 the landlord personally served the tenant with a Notice to End Tenancy for non-payment of rent. The Notice stated that the tenant failed to pay rent in the amount of \$1,200.00 and failed to pay utilities in the amount of \$252.00. The tenant has not paid rent for June or July and he did not file an application to dispute the Notice to End Tenancy. The tenant moved out of the rental unit on July 9, 2016. The landlord has not yet re-rented the unit. The landlord is seeking unpaid rent for June, July and August as well as utilities in the amount of \$480.00.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute

Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. The tenant moved out on July 9, 2016. The landlord has recovered possession of the rental unit and an order of possession is no longer required. The landlords' application for an order of possession is therefore dismissed.

Monetary Order and Security Deposit – The landlord has claimed unpaid rent for June, July and August as well as amounts for utilities. The landlord submitted copies of utility bills for electricity and gas. Some of the bills relate to the rental unit. Other bills appear to be for utilities at the landlord's residence in a different location. The landlord did not provide a copy of a tenancy agreement setting out the terms with respect to payment of utilities and she did not establish that the tenant was given copies of the bills. I find that the landlords have not proven on a balance of probabilities that they are entitled to an award in any amount for utilities and the claim for a monetary order for unpaid utilities is dismissed without leave to reapply. The tenant did not pay rent for June or July and he did not vacate until July 9th. I find that the landlord has established a total monetary claim of \$2,400.00 for the outstanding rent for June and July. The landlord has not provided any evidence to support a claim for loss of rental income for August and the claim for August rent is dismissed without leave to reapply. The landlord is entitled to recover the \$100.00 filing fee for this application for a total award of \$2,500.00. I order that the landlord retain the deposit and interest of \$600.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,900.00. This order may be filed in the Small Claims 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: August 09, 2016

Residential Tenancy Branch