



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by conference call in response to the Landlords' Application for Dispute Resolution (the "Application") for an Order of Possession. The Landlords also applied for a Monetary Order for: damage to the rental unit; unpaid rent; to keep the Tenant's security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"); and, to recover the filing fee.

Preliminary Issues

The male Landlord and Tenant appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlords' Application and the Landlords' 11 pages of evidence served prior to the hearing. The Tenant confirmed that he had not provided any evidence prior to this hearing. The hearing process was explained and both parties were given a full opportunity to present evidence, make submissions to me and to cross examine the other party on the evidence provided.

At the start of the hearing, the parties confirmed that the tenancy had ended and the Tenant had moved out of the rental unit pursuant to the notice to end tenancy for unpaid rent. The Landlord confirmed that they had received possession of the rental unit and withdrew the request for an Order of Possession.

During the hearing, the Landlord also withdrew his monetary claim for damages to the rental unit as he was not in possession of all evidence to support his monetary claim amounts as disclosed on his Monetary Order Worksheet. With the consent of the Tenant, I allowed the Landlord to withdraw the monetary claim with leave to re-apply. The hearing continued to hear the Landlords' monetary claim for unpaid rent only.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for unpaid rental arrears?

- Can the Landlords keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The parties agreed that this tenancy started in May 2013. A written tenancy agreement was signed by the parties for a month to month tenancy. Rent started off at \$1,100.00 payable on the first day of each month. This amount changed during the tenancy to \$1,200.00. The Landlords lowered the amount to \$1,000.00 in May 2017.

On August 17, 2017, the Tenant confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice"). The 10 Day Notice was provided into evidence and shows a vacancy date of August 27, 2017 due to \$7,200.00 of accumulated rental arrears.

The Landlords also provided a rent ledger document which shows rent payments made by the Tenant during this tenancy that lead to the accumulated rent amount of \$7,200.00. The Landlord explained that he attempted to give the Tenant multiple opportunities to catch up with rent, even lowering it for him.

The Tenant did not dispute the rental arrears owing to the Landlords which is the reason why he moved out of the rental unit pursuant to the vacancy date on the 10 Day Notice. The Tenant stated that he will work with the Landlord in making payments to pay off the debt.

Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due under a tenancy agreement whether or not a landlord complies with the Act.

I accept the undisputed evidence that the Tenant owes the Landlords \$7,200.00 in rent arrears. As a result, I grant the Landlords the amount of unpaid rent claimed. As the Landlords have been successful in this matter, the Landlords are also entitled to recover from the Tenant the \$100.00 filing fee. Therefore, the total amount awarded to the Landlords is \$7,300.00.

As the Landlords already hold \$550.00 in the Tenant's security deposit, I order the Landlords to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act.

As a result, the Landlords are issued with a Monetary Order for the remaining amount of \$6,750.00. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlords' copy of this Decision.

Conclusion

The Tenant has breached the Act by not paying rent. Therefore, the Landlords can keep the Tenant's security deposit and are issued with a Monetary Order for the remaining balance of \$6,750, inclusive of the filing fee.

The Landlord withdrew his request for an Order of Possession as the Tenant has now moved out. The Landlord withdrew his claim for damage to the rental unit and is given leave to re-apply.

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: November 09, 2017

Residential Tenancy Branch