



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM - DR

Introduction

This participatory hearing was scheduled for 1:30 p.m. on today's date, via teleconference call, pursuant to an Adjudicator's decision of October 11, 2019 made in response to a landlord's application for an Order of Possession and Monetary Order for unpaid rent made under the Direct Request procedure. Initially, only the landlord appeared for the hearing and testified that each of the tenants were notified of this hearing by registered mail sent to them on October 17, 2019. The landlord provided the registered mail tracking numbers and a search of the tracking numbers showed that the registered mail had been successfully delivered on October 18, 2019.

At 1:42 p.m. one of the tenants appeared and stated he was late because he had been held up at work. I informed the tenant as to what I had heard from the landlord thus far.

It came to my attention that the tenants have since vacate the rental unit and the only outstanding issue was the landlords' monetary claim. Since the landlords have already regained possession of the rental unit, an Order of Possession is no longer required and I do not provide one with this decision.

Issue(s) to be Decided

Have the landlords established an entitlement to the monetary compensation for unpaid rent claimed against the tenants?

Background and Evidence

The tenancy started on July 1, 2018 and the tenants paid a security deposit of \$1,300.00. The monthly rent was set at \$2,600.00 due on the first day of every month.

On April 1, 2019 the landlord issued a Notice of Rent Increase to the tenants in an attempt to increase the rent by 3% to \$2,678.00 starting on July 1, 2019. On July 3, 2019 the landlord requested the tenants provide him with written consent for the rent increase in a text message. By way of text message, the tenant indicated he would do but the written consent was not

provided. However, the tenants did pay the additional rent increase for the months of July 2019, August 2019 and September 2019.

The tenants failed to pay any rent for October 2019 and the landlord issued a 10 Day Notice to End tenancy or Unpaid Rent indicating rent of \$2,678.00 was outstanding as of July 1, 2019. The tenants did not dispute the Notice and did not pay anything toward the outstanding rent.

The tenants vacated the rental unit on or about November 1, 2019.

The landlords seek to recover the unpaid rent for October 2019 and authorization to retain the tenants' security deposit in partial satisfaction of the outstanding rent.

I orally provided my findings and reasons to the parties during the hearing, and the parties did not have any objections.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold rent.

Sections 40 through 43 provides for the ways a landlord may lawfully increase the rent payable. The annual rent increase for 2019 was limited to a maximum of 2.5% unless the landlords had the authorization from the Director or the written consent of the tenants to increase the rent by more than 2.5%. The tenants in this case did not provide the landlord with written consent to increase the rent by more than 2.5% before he issued the Notice of Rent Increase, or at any time thereafter. Nor, did the landlord have the Director's authorization to increase the rent by more than 2.5% before the Notice of Rent Increase was issued, or anytime thereafter. I also note that the landlord did not give the tenants three full months of advance notice of a rent increase as required. Part D. of the Residential Tenancy Branch Policy Guideline 37: *Rent Increases* provides that paying an additional rent increase does not amount to written consent for that rent increase. Therefore, I find the landlords did not increase the rent in a manner that complies with the Act and the lawful rent remained at \$2,600.00 per month.

Section 43(5) provides for what happens if a tenant pays a rent increase and the landlord did not increase the rent in accordance with the Act. Section 45(3) provides:

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase

In this case, the tenants paid an additional \$78.00 in rent, over and above the legal rent of \$2,600.00, for the months of July 2019, August 2019 and September 2019. Pursuant to section

43(5) the tenants were entitled to deduct that overpayment \$234.00 [\$78.00 x 3 months] from rent payable for October 2019. Therefore, I find the tenants remain liable to compensate the landlord the balance owing of \$2,466.00 [\$2,600.00 – \$234.00] and I award the landlords that amount.

Considering the tenants did not pay anything toward rent owed or October 2019 I further award the landlord recovery of the \$100.00 filing fee paid for this Application.

I authorize the landlords to retain the tenant's \$1,300.00 security deposit in partial satisfaction of the rent owed to the landlords.

In keeping with all of the findings and reasons above, I provide the landlord with a Monetary Order in the net amount of \$1,166.00 [\$2,466.00 + \$100.00 - \$1,300.00] to serve and enforce upon the tenants.

Conclusion

The landlords are authorized to retain the tenants' security deposit and are provided a Monetary Order for the balance of \$1,166.00 to serve and enforce upon the tenants.

The tenants have already vacated the rental unit and an Order of Possession is not required or provided.

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 12, 2019

Residential Tenancy Branch