



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing and had opportunity to be heard.

The landlord applied for an order of possession, but the parties agreed that the tenants had vacated the rental unit and I consider that claim to be withdrawn.

At the outset of the hearing the landlord objected to my presiding over the hearing, suggesting there was a conflict of interest as he alleged I had made errors of law in a previous decision in which he was a participant. When questioned about this concern, the landlord stated that he would continue with the hearing under protest and clarified that he was not suggesting that I was biased. I determined that there was no conflict of interest and proceeded to hear the matters before me.

The landlord further objected to the testimony of the tenants' witness who was a party who had occupied the rental unit immediately prior to their tenancy, again suggesting that there was a conflict of interest as this witness had previously been a tenant of the landlord and there was a dispute between them. As the tenants' witness testified to the state of the plumbing during the time he occupied the rental unit and as that testimony was not relevant to this hearing, the testimony has not been considered.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2008 and that pet and security

deposits of \$1,300.00 each were collected at that time. The tenancy was to be for a fixed term, ending on June 30, 2009. The landlord testified that the tenants failed to pay their rent for September at the beginning of that month and that they told the landlord that they were not paying the rent because of repair issues in the rental unit which they felt had not been addressed in a timely manner. On September 12, 2008 the landlord served the tenants with a 10-day notice to end tenancy for non-payment of rent. On or about September 16, the tenants paid half of the rent owing. The tenants acknowledged at the hearing that the remaining \$1,300.00 remains outstanding. The tenants testified that they vacated the rental unit pursuant to the notice to end tenancy. The landlord testified that when he discovered that the rental unit was vacant, he immediately placed advertisements on Craigslist and since the rental unit was vacated, he has continued to repost the Craigslist advertisement as well as advertising in the North Shore News. The landlord testified that the tenants did not return the keys to the rental unit for some 18 days after the end of the tenancy. The tenants did not dispute this allegation. The parties both gave testimony concerning the condition of the rental unit and repairs which had been requested and/or performed, but I find that this evidence is irrelevant to the landlord's application for unpaid rent and loss of income and this testimony has not impacted this decision.

Analysis

The tenants acknowledged that they did not pay \$1,300.00 of their rent in September and agreed that landlord was entitled to retain the \$1,300.00 security deposit in payment towards those arrears. As for the landlord's claim for loss of income for October, I accept that the tenants moved pursuant to the notice to end tenancy.

However, the notice to end tenancy set the end of tenancy date as September 22, 2008. I find the tenants overheld the rental unit by 8 days as they did not vacate the rental unit until September 30. I find the landlord acted reasonably in not advertising the rental unit until the tenants had vacated and further find that the landlord acted quickly to attempt to minimize his losses by advertising the rental unit as soon as it was vacant. I find the landlord is entitled to recover \$2,600.00 in lost income for October. I award the landlord

\$3,900.00 which represents \$1,300.00 in unpaid rent and \$2,600.00 in lost income for October. The landlord is also entitled to recover the \$50.00 filing fee paid to bring this application.

Conclusion

I find that the landlord has established a claim for \$3,950.00. I order that the landlord retain the security deposit and interest of \$1,307.35 and the pet deposit and interest of \$1,306.23 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,336.42. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated October 24, 2008.