



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR

OPR

MNSD

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated February 2, 2009, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared and gave testimony in turn. At the outset of the hearing the parties advised that the tenant had already vacated the unit. Therefore the request for an order of possession was withdrawn.

Issue(s) to be Decided

The landlord is seeking a monetary order claiming rental arrears of \$1,700.00 owed by the tenant.

The issues to be determined based on the testimony and the evidence are:

Whether or not the landlord is entitled to monetary compensation for rental arrears owed or loss of rent.

Whether or not the landlord is entitled to retain the security deposit and pet damage deposit to set off any debt owed

Preliminary issue

The tenant advised that the landlord had served both the Ten-Day Notice and the Notice of Hearing to the incorrectly named party. The landlord had mistakenly amalgamated the tenant's first name with the other occupant's surname on both of these documents served. The parties confirmed the correct names. The landlord testified that the tenant was to blame for the incorrect name being used by intentionally providing misleading information to the landlord at the start of the tenancy. The tenant refuted this and pointed out that the rent cheques paid to the landlord featured the tenant's correct name and were accepted by the landlord and the bank at the time they were cashed. I find that the confusion about the tenant's correct name could have been avoided had the landlord properly followed the Act by using a written tenancy agreement, which was not done in this instance. In any case, the application was amended to show the tenant's correct first and last names.

Background and Evidence

The landlord testified that the tenancy began "about a year and a half ago" at which time the rent was set at \$850.00 and a security deposit of \$425.00 was paid. The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated February 2, 2009 with effective date of February 12, 2009. No other evidence was submitted by the landlord. The landlord testified that the tenant did not vacate the unit on February 12, 2009, nor did the tenant pay any rental arrears. The landlord testified that the tenant returned the key on March 15, 2009 and the landlord's position is that because the tenant was over-holding until March 15, 2009, that qualifies as the date that the tenancy ended.

According to the landlord, the tenant therefore owed unpaid rent for both February and March. The landlord testified that he took steps trying to verify whether the tenant had left on February 12, 2009, the effective date shown on the Notice, by knocking on the door. The landlord presumed that, since there was no answer, the tenant had not yet vacated. The landlord testified that he did not attempt to inspect the unit at any time prior to March 15, 2009, as was his

right to do under the Act with 24-hour written notice to enter. When asked why he waited for approximately one month instead of taking reasonable steps to verify whether the tenant was still living in the unit, the landlord stated that he was waiting for the hearing and did not want to get "sued" for entering without authorization. The landlord admitted that he did not attempt to re-rent the unit until after March 15, 2009 after he received the tenant's keys.

The landlord is claiming \$850.00 rent for February 2009, \$850.00 rent for March 2009 and seeking to retain the \$425.00 security deposit as partial payment for the arrears owed.

The tenant testified that rent for February was not paid as the tenant mistakenly believed that he could withhold rent because the landlord had refused to supply essential services for a long period of time during which the tenant had been left without heat and hydro. The tenant testified that the Ten Day Notice submitted by the landlord showed the wrong date. The tenant testified that a Ten-Day Notice dated February 17, 2009, showing an effective date of February 22, 2009 had been placed on the inside of the door of their unit. The tenant testified that the landlord had entered the unit without permission or notice and that this intrusion had been reported to the police. The tenant gave a police file number. The tenant stated that the tenant left on the date specified by the landlord, February 22, 2009. The tenant testified that the tenant tried to meet with the landlord to pick return the keys but the landlord would not respond to the tenant's calls. The tenant stated that, with the help of a third party who called the landlord seeking to rent, the tenant was able to show up at their meeting and finally returned the keys on March 15, 2009. The tenant testified that the landlord misrepresented the amount of deposit paid by the tenant. The tenant testified that \$425.00 security deposit was paid but, in addition, during the tenancy, the tenant paid \$300.00 pet deposit. The tenant testified that when the tenant adopted a pet this required the landlord's signature verifying that the pet was allowed. The landlord disputed that this occurred and in response the tenant

offered to fax in the signed permission form into evidence. This request was denied because it was too late to submit evidence.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent, regardless of the dispute over the date and the name on the Notice.

I find that the landlord's lapses in fulfilling the landlord's obligations under the Act, needlessly complicated both the tenancy relationship and the landlord's claim, starting with a failure to ensure making application against the correct name. I find that the landlord neglected to comply with section 13 which requires a written tenancy agreement; did not comply with requirements under sections 23 and 35, relating to move-in/move-out condition inspection reports and did not fulfill responsibility under section 7(2) by not taking reasonable steps to minimize losses by acting to re-rent as quickly as possible.

That being said, the testimony of both parties established that the tenant failed pay \$850.00 rent owed for the month of February 2009.

In regards to the security deposit, and the pet damage deposit, I find that there was conflicting testimony with the landlord alleging that the tenant only paid \$425.00 and the tenant arguing that an additional \$300.00 was paid for a pet damage deposit. Again, the landlord's failure to create a written tenancy agreement has seriously impeded this determination.

However, it is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the landlord who is making the monetary claim, bears the onus of proving during these proceedings, what amounts were paid or not paid by the tenant. I find that the landlord has not submitted any financial documentation in regards to the tenant's rental account to verify credits and

debits and has instead chosen to rely on verbal testimony which is being disputed by the respondent. When evidence consists of conflicting and disputed verbal testimony in the absence of independent evidence, then the party who bears the burden of proof is not likely to prevail.

In the absence of evidence to the contrary, I accept the testimony of the tenant that in addition to the security deposit of \$425.00, the tenant also paid \$300.00 pet damage deposit for a total deposit of \$725.00 paid.

I find that the landlord has established monetary entitlement in the amount of . \$900.00 comprised of \$850.00 rental arrears and the \$50.00 paid for this application. I order that the landlord retain the security deposit, pet damage deposit and interest of \$762.23 in partial satisfaction of the claim, leaving a balance due of \$137.77.

Conclusion

I hereby grant the Landlord an order under section 67 for \$137.77. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

March 2009

Date of Decision

Dispute Resolution Officer