



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the landlord OPR, MNR, MNSD, FF

For the tenant MNDC

Introduction

This decision deals with two applications for dispute resolution, one brought by the landlord and one brought by the tenant. Both files were heard together. The landlord seeks an Order of Possession for unpaid rent, a Monetary Order to recover rent, to keep the tenants security deposit and recover the filing fee for this application. The tenant seeks a Monetary Order for compensation for damage or loss under the *Act*, regulations or tenancy agreement. At the outset of the hearing the landlord states that the tenant has moved out and as a result he withdraws his application for an Order of Possession, to keep the tenants security deposit and to recover the filing fee.

The landlord served the tenant in person on July 05, 2009 with a copy of the Application and Notice of Hearing. The tenant served the landlord by registered mail on July 07, 2009 with a copy of the application and a Notice of the Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Are the tenants entitled to compensation for damages and if so, how much?



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Background and Evidence

This tenancy started on February 01, 2008 and ended some time around July 15, 2009. Rent for this property was \$850.00 per month due on the 1st of each month. The tenancy agreement states that the landlord will reduce the rent by \$50.00 each month for any work the tenant carries out on the property. The tenant paid a security deposit of \$15.00 on March 16, 2008.

The landlord testifies that since February 2008 the tenant has been repeatedly late paying her rent or the rent was short each month. On September 03, 2008 the landlord issued a 10 Day Notice to End Tenancy for unpaid rent. As the tenant promised to pay the arrears the landlord agreed to let the tenancy continue. Up to April, 2009 the amount of rent owed to the landlord is \$4,850.00. On April 13, 2009 the tenant paid \$500.00 towards her rent arrears. No rent was paid for May and the landlord issued another 10 Day Notice on May 18, 2009. No rent was paid for June and on June 12, 2009 the landlord issued the tenant with another 10 Day Notice to End Tenancy for unpaid rent. The total amount now outstanding in rent is \$6,750.00. The landlord has reduced his claim to \$5,000.00.

The tenant claims that she had carried out work for the landlord on the property and her rent was reduced due to this. The tenant also claims that she agreed to move out on or around July 15, 2009. While she was away from the rental property at the beginning of July, moving her belongings to her new address, she claims that landlord removed her truck and personal belongings from inside the house, backyard and truck. She claims these items to be valued at \$6,000.00.

The landlord claims that at this time he was away in Victoria. When he returned the property had squatters living in it. The tenants' truck was parked outside and he towed this to a friend's house to secure it because of the squatters. New tenants have since moved into the property. The tenant has had her truck returned to her and all her belongings in the truck were secure. The new tenants have placed all the tenants remaining belongings in the truck. The landlord testifies that the tenant did carry out some work in the property but this was all removed when she moved out and she had been reimbursed for the amounts

Analysis

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to s. 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days. Therefore I find that the tenant owes outstanding rent to the landlord to the amount of \$6,750.00 pursuant to s.67 of the *Act*. The landlord has reduced his claim for outstanding rent to **\$5,000.00**. The landlord will receive a monetary order for the balance owing for unpaid rent of: **\$5,000.00**

The landlord has chosen not to pursue the remainder of his monetary claim.

The tenant has made a claim for money owed or compensation for damage or loss under the *Act*. I have applied a test for damage and loss claims in which the claimant must:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.



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I find that the tenants claim for compensation does not meet the components of the above test. The tenant has not submitted any evidence to support her claim of \$6,000.00; therefore, I dismiss the tenants' application without leave to reapply.

Conclusion

I HEREBY FIND in favor of the landlord's adjusted monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$5,000.00**. The order must be served on the tenant and is enforceable through the Provincial Court 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 19, 2009.

Dispute Resolution Officer