



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rent owed for the months of August 2009, September 2009, October 2009 and November 2009 in the amount of \$846.00 for each month and to retain the security deposit in partial satisfaction of the claim.

Although served in person on September 29, 2009 with the Application for Dispute Resolution and Notice of Hearing the tenant did not appear.

Issue(s) to be Decided

The landlord stated that there was a previous hearing held on September regarding rent owed for the month of August 2009 and loss of rent owed for the month of September 2009 and that a monetary order was issued along with an Order of Possession effective September 8, 2009. However, the matter of rental arrears owed and the issue of the Order of Possession were brought to Supreme Court by the tenant and a stay was placed on the orders.

The first issue to be determined, based on the testimony and evidence, is whether or not this is a matter that is under my authority to determine under the Act.

Background and Evidence

The landlord testified that the tenancy began on February 1, 2009. The landlord testified that the rent was \$846.00 and that the tenant qualified for a subsidized rent of \$390.00. The landlord testified that when the tenant failed to pay rent a Ten-Day Notice was issued the matter was heard on September 8, 2009 resulting in a monetary order and order of possession. Following this, the tenant brought the matter through an application to Supreme court, which ordered a stay of the orders issued on September 8, 2009 and also required that the tenant's monthly rent for August, September and October was to be paid into the court.

The landlord testified that a review of the tenant's financial eligibility established that the tenant's no longer met the criteria to qualify for the subsidized rent and that the monthly rent now due and payable would be \$846.00 per month pursuant to the tenancy agreement.

The landlord submitted into evidence a copy of the tenancy agreement showing that the market rent for the unit was \$846.00 and the tenant would be required to pay that amount without the subsidy.

Analysis

Based on the testimony of the landlord and the evidence submitted, I find that the rental rate of the unit is \$846.00 and that the tenant's eligibility for the subsidy had ended based on the landlord's review of the eligibility criteria and the tenant's financial circumstances.

Section 58 (1) states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the a landlord or tenant in respect of rights, obligations and prohibitions under the Act or the terms of a tenancy agreement required or prohibited under this Act, or that relate to: a) the tenant's use, occupation or maintenance of the rental unit; or b) the use of common areas or services or facilities. Section 58 (2) provides that if the director receives an application under subsection (1), the director must determine the dispute unless (a) the claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act*, (b) the application was not

made within the applicable period specified under this Act, or **(c) *the dispute is linked substantially to a matter that is before the Supreme Court.*** (my emphasis)

In this instance, I have made a finding of fact that the current monthly rate for the rental unit is \$846.00 per month, which represents the market rent as identified under the tenancy agreement signed by both parties. However, on the matter of whether or not any rent is owing and what portion has remained unpaid by the tenant, this was previously determined at an earlier dispute resolution hearing held on September 8, 2008 and, as I understanding it, is now apparently being dealt with by the Supreme Court.

Being that the ending of the tenancy and payment of rental arrears are issues that are substantially linked to a matter that is before the Supreme Court, I am not at liberty to hear, determine nor issue an order in relation to the matter of rental arrears owed by the tenant.

Conclusion

Based on the above, I hereby dismiss this matter with leave to reapply.

November 2009

Date of Decision

Dispute Resolution Officer