Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes   MT, CNC, CNR, OPR, MNR, RPP, LRE, FF

Introduction

This hearing was scheduled to hear cross applications. The tenant had applied for more time to make this application, to dispute a Notice to End Tenancy for Unpaid Rent and a Notice to End Tenancy for Cause, return of personal possession, to set conditions on the landlord's right to enter the rental unit. The landlord applied for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee paid for this application. The tenant did not appear at the hearing. The landlord appeared at the hearing and confirmed he had been served with the tenant's application. The landlord provided documentary evidence that he had served the tenant with the landlord's application and evidence by registered mail on December 14, 2009.

As the tenant did not appear at the hearing and the landlord appeared and was prepared to address the tenant's application, I dismissed the tenant's application without leave to reapply.

As I was satisfied that the landlord sufficiently served the tenant with notification of this hearing I proceeded to hear from the landlord without the tenant present.

Issues(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent?
2. Amendment of the landlord's application and retention of the tenant's security deposit.
3. Award of the filing fee.

Background and Evidence

The landlord testified that the tenancy commenced April 3, 2009 and the tenant paid a security deposit of $225.00 on that date. The tenant was required to pay rent of $450.00 on the 1st day of every month. The tenant did not pay rent for December 2009 and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on December 2, 2009 indicating rent of $450.00 was outstanding. The landlord confirmed that the tenant did not pay the outstanding rent and vacated the rental unit on January 8, 2010.

The landlord raised the issue of jurisdiction as the rental unit is located in a rooming house. The exemptions provided under section 4 of the Act were reviewed with the landlord during the hearing and the landlord confirmed that none of the exemptions apply to this rental unit.

The landlord requested that the application be amended to request retention of the tenant's security deposit in partial satisfaction of the outstanding rent. I accepted the landlord's request for amendment with respect to the security deposit.

The landlord enquired as to amending the application to include loss of rent for January 2010 and damages. The landlord was informed that he retains the right to make a subsequent application but that this application would not be amended to include amounts for loss of rent or damages.

Analysis

Upon consideration of all the evidence before me, I am satisfied that the Act applies to this tenancy agreement and that the landlord is entitled to recover unpaid rent for the month of December 2009 in the amount of $450.00.

I further authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the filing fee to the landlord.

In light of the above findings, I provide the landlord with a Monetary Order in the amount of $275.00 ($450.00 + 50.00 – 225.00) to serve upon the tenant. The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord has established an entitlement to unpaid rent for the month of December 2009 and is authorized to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. The landlord has been provided a Monetary Order in the amount of $275.00 including the filing fee to serve upon the tenant.

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: January 22, 2010.

Dispute Resolution Officer