

DECISION

Dispute Codes CNR, MNDC, MNSD, OPB, OPR, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties .

All testimony was taken under affirmation.

Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request to have a Notice to End Tenancy canceled, and a request for a monetary order for \$2850.00. The tenant is also requesting an order that the landlords bear the \$50.00 cost of the filing fee that he paid for his application for dispute resolution.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy that was given for nonpayment of rent and a request for a monetary order for \$1425.00. Landlords are also requesting an order allowing them to keep the full security deposit towards this claim, and a request that the tenant be ordered to bear the \$50.00 cost of the filing fee that they paid for their application for dispute resolution.

Background and Evidence

By the date of the hearing the tenant had vacated the rental unit, and therefore there was no longer any need to deal with the tenants request to have a Notice to End Tenancy cancelled or the landlords request for an Order of Possession. Therefore this decision deals only with the monetary claims brought by both sides.

Tenant's application

Decision and Reasons

The applicant is claiming that he suffered ongoing daily harassment from the landlords during his tenancy and therefore is requesting the return of three months' rent for a total of \$2850.00; however it is my decision that he has not provided sufficient evidence to meet the burden of proving his claims.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. In this case it is basically just the tenant's word against that of the landlords and that is not sufficient evidence to meet the burden of proof.

The applicant has submitted some witness letters and although it is obvious from the information provided by the tenant and the witness letters that there was some animosity between the landlord and the tenants however the evidence is not sufficient to make a finding that there was ongoing daily harassment.

Conclusion

The tenant's application is dismissed without leave to reapply.

Landlords application

Decision and Reasons

The landlords are requesting an order to keep the full security deposit of \$475.00 to cover shortfall in the rent for the month of April 2010, and are also requesting an order for further \$950.00 for lost rental revenue for the month of May 2010.

Security deposit

The tenant failed to pay the full rent in the month of April 2010, withholding \$475.00 claiming that he feared that the landlords would not returned the security deposit when he vacated at the end of April pursuant to their mutual agreement to end tenancy.

The tenant does not have the right to unilaterally apply his security deposit towards the rent, and therefore it is my decision that I will allow the landlords to keep the full security deposit to cover the shortfall in the rent. I will also allow the landlords claim for the \$50.00 filing fee, because the tenant did not have the right to withhold his rent.

Lost revenue for May 2010

I deny the landlords claim for lost revenue for May 2010, because the parties signed a mutual agreement to end the tenancy on April 30, 2010, and the tenant vacated on April 30, 2010 pursuant to that agreement.

The landlords claim that they did not attempt to re-rent the unit because they feared that the tenant may not vacate, however there is no evidence to show that he ever gave them any indication that he would not comply with the mutual agreement to end the tenancy on April 30, 2010.

The tenant was given a 10 day Notice to End Tenancy for failing to pay the full April 2010 rent, and did not comply with that notice, however had he moved out pursuant to that notice he would have still been liable for rent for the rest of the month of April 2010, but unless he failed to vacate by the end of April 2010 he was not liable for any further rent.

Conclusion

I hereby order that the landlords may retain the full security deposit and I have issued a monetary order in the amount of \$50.00 to cover the filing fee. The claim for May 2010 lost rental revenue in the amount of \$950.00 is dismissed in full without leave to reapply.

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: May 19, 2010.

Dispute Resolution Officer