

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution to obtain a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent, the tenant and her advocate.

While the landlord had submitted this Application on January 1, 2006 a related hearing on February 26, 2010 in which the tenant had applied to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent resulted in a settlement agreement that included the following terms:

1. The landlord will withdraw the 10 Day Notice to End Tenancy for Unpaid Rent;
2. The tenant will continue to pay from the date of this decision forward;
3. The tenant, with her agent, and landlord will meet to try to resolve the outstanding rent owed and if resolved the landlord will cancel the hearing scheduled in June 2010; and
4. The tenant will ensure that she files her application for rent subsidization within the required time frame.

At the start of this hearing, I confirmed with the parties that all points of the agreement had been met except that the parties did not meet to resolve the outstanding rent owed. The parties admitted to early attempts to meet but no meeting was ever set up.

The tenant's advocate had provided a spreadsheet to the landlord in February outlining the tenant's assertion of the rent owe and paid per month over the tenancy since January 1, 2005 excluding the balance forward, the returned cheques and with the tenants interpretation of the rent owe for January to April 2005. This was not submitted into evidence for this hearing. I requested the tenant's advocate to submit this spreadsheet to me via fax.

At the close of the hearing I offered the parties an opportunity to make determine an agreed upon value to the debt owed to the landlord, the parties failed to agree to an amount.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 26, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on October 1, 2001 as a month to month tenancy for a current monthly rent of \$320.00 per month.

The landlord provided the following documentary evidence prior to the hearing:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on November 20, 2009 with an effective dated of November 27, 2009 for rent owed in the amount of \$4,368.00;
- A copy of the tenant's account statement dated October 28, 2009 showing a balance owing of \$4,368.00;
- A copy of the tenant's account ledger dating from a balance brought forward on December 31, 2004 of \$600.00 to present, showing an outstanding balance of \$4662.00;
- A copy of the tenant's account statement dated May 17, 2005 showing a balance owing of \$1,222.00;
- A copy of an email from BC Housing to the property manager dated January 22, 2010 outlining the effective dates and amounts of the tenant's rent amount beginning January 1, 2005 to present;
- Copies of correspondence dating from January 31, 2005 to August 18, 2009 outlining amounts owed and copies of account ledgers, amounts of monthly rent after approval of subsidizations; and
- Copies of previous dispute resolution decisions related to this dispute.

The landlord's agent testified that she has tried to meet with the tenant on several occasions to resolve the issue of the amount of rent owed and each time the tenant disagrees with the amounts and indicates that she will find the documentation and get back to the landlord and then fails to get back to the landlord.

The tenant disputes this testimony and through her advocate indicates that she believes she owes the landlord approximately \$1,900.00. Of particular concern, the advocate pointed out that the landlord has not provided any evidence confirming the balance forward of December 31, 2004 of \$600.00.

The advocate also suggests the landlord has not provided evidence of two cheques returned as insufficient funds (NSF) (May 5, 2005 and August 29, 2008) and incorrect amounts for the period of January to April 2005 in that the account ledger indicates rent unpaid was marked as \$397.00 per month but the actual owed was \$125.00 per month.

The parties agreed that during the tenancy the tenant had provided a substantial prepayment of rent that allowed the tenant to not have to make monthly rental payments from late 2005 until September 2009 and that the landlord failed to provide adequate notice to the tenant that she needed to begin payment rent again because the prepayment had been exhausted.

Analysis

While I recognize that the case before me has taken a long time to develop, in particular the evidence provided shows that the other than when the tenant had made a large prepayment she has exhibited a disregard for the full payment of rent and the application process for subsidization.

I note that Section 26 of the Act requires the tenant to pay rent when it is due and while both parties agree that the tenant does owe the landlord arrears I would suggest that it is not solely the responsibility of the landlord to track the rent that has been paid and when she received these notices from the landlord she should have taken more responsibility to resolve the matters in a timely fashion.

I find that by leaving this situation unresolved for this length of time the landlord has created an expectation on the part of the tenant that incomplete or non payment of rent is acceptable. However, I do acknowledge that from time to time the landlord did inform the tenant there was an issue of overdue or unpaid rent.

In particular I note the landlord's letter of August 18, 2009 indicating arrears at that time in the amount of \$3,776.00 requesting payment prior to August 31, 2009 and an opportunity for the tenant to discuss any possible discrepancies. I also note the landlord further issued a 10 Day Notice to End Tenancy for this unpaid rent (and more) on November 20, 2009.

These in themselves should have been an indication to the tenant of the landlord's intent to resolve this matter and receive payment. To date, the tenant has provided no evidence to the landlord or to this hearing confirming the amounts she disputes. Having said that if I look at the specific items noted by the tenant's advocate as follows:

1. Dispute of the balance forward of \$600.00 dated December 31, 2010 – the tenant and her advocate provide no evidence that the amount is incorrect, they only suggest the landlord has not provided proof.

In weighing the evidence before me on this issue, I find the tenant and landlord disagree on this amount and other than the contrary testimony of each of the parties; the only evidence submitted is the landlord's account ledger. I accept the ledger as proof of the balance forward.

2. The two NSF cheques (May 5, 2005 and August 29, 2008) – again the only evidence submitted other than the disputed verbally testimony, is provided by the

landlord in the form of the account ledger. In the presence of this documentation I accept the landlord's account and I find the tenant has failed to substantiate her claim.

3. As to the issue of the period between January and April of 2005, the email dated January 22, 2010 confirming the rent owed for this time period was \$397.00. I find the tenant has failed to substantiate her claim.

Conclusion

Based on the above analysis, I find that the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$4,762.00** comprised of \$4,662.00 rent owed and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced 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: June 11, 2010.

Dispute Resolution Officer