

DECISION

Dispute Codes OPR, MNR, MNSD, CNR, DRI, RR, FF, O

Introduction

This hearing dealt with cross applications. The tenant had applied to cancel a Notice to End Tenancy for unpaid rent, to dispute a rent increase, and authorization to reduce rent. The landlord had applied for an Order of Possession and Monetary Order for unpaid rent as well as authorization to retain the security deposit, recover the filing fee and bank charges. Both parties appeared at the hearing and were provided the opportunity to be heard.

I heard the landlord was unable to serve the tenant with the landlord's evidence package. I proceeded to take verbal testimony from both parties and referred to the 10 Day Notice included as evidence by both parties.

The parties informed me that the tenant had vacated the rental unit near the end of May 2010. Accordingly, I determined the only remaining issues to determine with this proceeding related to monetary compensation and the security deposit.

Issues(s) to be Decided

1. Is the landlord entitled to compensation for unpaid rent?
2. Is the landlord entitled to retain the security deposit?
3. Is the landlord entitled to recover bank fees from the tenant?
4. Is the tenant entitled to compensation from the landlord?

Background and Evidence

The parties provided undisputed testimony as follows. The month-to-month tenancy commenced in December 2009. The tenant was required to pay rent of \$375.00 on the

1st day of every month in accordance with a verbal tenancy agreement. The landlord received a \$187.50 security deposit at the commencement of the tenancy. The tenant failed to pay rent for May 2010 except for a \$5.00 previous overpayment and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on May 4, 2010. The tenant vacated the rental unit on or about May 28, 2010. The landlord was able to re-rent the unit starting June 15, 2010.

In making this application, the landlord sought compensation of unpaid rent for May and June 2010 in the amount of \$375.00 per month, plus the security deposit, plus the filing fee, plus bank fees she incurred due to a lack of rental income for a total claim of \$1,030.00.

The tenant acknowledged he had not paid rent for May 2010 due to personal circumstances. The tenant also testified the tenant complained to the landlord three times about the smell of mould and that the unit was filthy when he moved in. However, the tenant stated the landlord had given the tenant and his wife a cash gift at Christmastime and he did not wish to seek any other compensation from the landlord. Rather, the tenant stated he wanted to be heard with respect to the above issues and alleged breaches of privacy laws by an individual that supplied the landlord with private information.

Analysis

Upon hearing from both parties, I found the landlord entitled to receive rent for the month of May 2010 in the amount of \$370.00 (\$375.00 - \$5.00) and that the landlord incurred a loss of half a month's rent for June 2010 as a result of the tenant breaching the tenancy agreement.

As the parties were informed during the hearing, an award for retention of the security deposit is offset against established losses or damages. Accordingly, the security

deposit is awarded to the landlord in partial satisfaction of the unpaid rent and loss of rent.

I decline the landlord's request to recover bank fees she was charged by her financial institution for her own pre-authorized payments being declined for insufficient funds as the Act does not provide for recovery of such amounts.

As the landlord was largely successful in this application I award the filing fee to the landlord.

I found the issue of a rent increase to be moot because the tenancy has ended and the tenant did not pay a rent increase. Nor did the landlord make a claim based on a rental increase. Since the tenant clarified he did not wish to obtain compensation from the landlord I do not award any to the tenant and I dismiss his application. However, I am satisfied the tenant has been provided the opportunity to be heard and this was the intended outcome for the tenant.

The landlord is provided a Monetary Order in the amount of \$420.00 (\$370.00 May rent + 187.50 half of June's rent + 50.00 filing fee – 187.50 security deposit). The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord was largely successful with this application. The landlord was authorized to retain the tenant's security deposit and provided a Monetary Order for the balance of \$420.00 to serve upon the tenant. The tenant's application was dismissed.

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 24, 2010.

Dispute Resolution Officer