



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPL, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

The landlord and tenant confirmed the tenant vacated the rental unit on June 20, 2010 and as such there is no longer a need for an order of possession. I accept the landlord's amendment to his application to remove the request for an order of possession.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for damage or loss under the Act, regulation or tenancy agreement; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on June 1, 2007 as a month to month tenancy for the current monthly rent of \$700.00 due on the 1st of the month, a security deposit of \$350.00 was paid on June 8, 2007. The parties also agree they completed a move out inspection on June 29, 2010 and the tenant agreed for the landlord to retain the security deposit and interest as a result of the condition inspection.

The landlord has submitted the following documents into evidence:

- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 30, 2010 with an effective date of June 1, 2010 citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse;
- A summary of events leading to the dispute, dated June 1, 2010;
- An outline of the breakdown of the landlord's financial claim dated June 2, 2010;

- A copy of an email from the tenant to the landlord dated April 30, 2010 providing confirmation to the landlord that in accordance with the 2 month notice she is withholding the May rent as tenant compensation;
- A copy of a Condition Inspection Report showing both move in and move out inspections completed included the tenants agreement, dated June 29, 2010 for the landlord to withhold \$350.00 plus interest from her security deposit;
- Copies of several advertisements for rental properties in the community;
- Faxed copies of 8 photographs of the residential property; and
- A copy of an email exchange between the landlord and tenant between June 19 and June 23, 2010.

The landlord testified that the condition of the rental unit at the end of the tenancy was such that he is still completing repairs and restoration and that his son's family has still been unable to move in to the residential property.

The tenant testified that the reason she was unable to move out was that she had been unable to find suitable accommodation due to her age and disabilities. She further noted that she did not inform the landlord until the end of May, 2010 because she had hoped to find something prior to the end of that month.

The tenant also acknowledged that she did not pay rent for the month of May, 2010 in compensation for the 2 Month Notice and that she also did not pay rent for the month of June 2010 as she needed those funds to pay rent at her new accommodation.

Analysis

As the tenant did not dispute the 2 Month Notice to End Tenancy issued by the landlord on March 30, 2010 she is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date in accordance with Section 49(9) of the *Act*.

When one party files a claim for compensation for loss or damage under the *Act*, regulation or tenancy agreement they must provide evidence to prove the following 4 point test:

1. That a loss or damage exists;
2. The loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of that damage or loss;
4. The steps taken to mitigate the damage or loss.

By the tenant's testimony she confirmed that she had not moved out of the rental unit until June 20, 2010 and completed the move out inspection with the landlord on June 29, 2010. As such, I find the tenant is responsible for rent for the month of June, 2010.

In relation to the landlord's claim for rent for the month of July, 2010 the landlord has provided no evidence that he would be receiving rent payments from the family member who would be residing in the rental unit and as such has not established that a loss exists. Based on this, I dismiss this portion of the landlord's claim.

As to the landlord's claim for the costs that his adult family member incurred for storage, rental accommodations and additional moving expenses because the tenant had failed to move, the landlord has failed to provide evidence that this is a loss that **landlord** incurred. As a result, I dismiss this portion of the landlord's application.

The landlord indicated in the hearing that the rental unit was left in such a condition that the damages were substantially more than what would be covered by the retained security deposit, and as I have made no findings on this issue I note the landlord is at liberty to file a separate Application for Dispute Resolution regarding those issues.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$750.00** comprised of \$700.00 rent owed and the \$50.00 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: July 21, 2010.

Dispute Resolution Officer