



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPB, MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and Monetary Order for unpaid rent; damage to the unit; authorization to retain the security deposit and recovery of the filing fee.

The landlord had named three respondents in making this application. As a preliminary issue I noted that the tenancy agreement had named only one of three respondents as a tenant. The landlord stated he had not entered into a tenancy agreement with the two other named respondents. Rather, those two named respondents were permitted occupancy by the tenant. I found that those two named respondents were not tenants as defined under the Act and I amended the application to exclude them from this proceeding.

The tenant did not appear at the hearing. The landlord testified that he personally served the tenant with the hearing documents on July 28, 2010 and sent them to the tenant at the rental unit via registered mail on July 28, 2010. The landlord provided the registered mail receipt and tracking number as evidence. The landlord testified the tenant vacated the rental unit in August 2010 after the landlord obtained an Order of Possession issued July 27, 2010 pursuant to an application for an order for early end to tenancy. Having been satisfied the tenant was served with the hearing documents in a manner that complies with the Act I proceeded to hear from the landlord without the tenant present.

As the landlord has regained possession of the rental unit I do not provide an Order of Possession with this decision. The landlord requested that his monetary claim be amended to exclude the claim for carpet damage as the landlord is still in the process of remediating damages. As this application was made before the tenant vacated the rental unit I was satisfied the landlord's claims for damage was premature and I permitted the landlord to withdraw the claim related to carpet damage. The landlord is at liberty to make another application with respect to damage to the rental unit.

Issues(s) to be Decided

1. Has the landlord established an entitlement to unpaid and loss of rent for the months of June, July and August 2010?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

I was provided undisputed evidence as follows. The landlord and tenant entered into a tenancy agreement for a one-year fixed term tenancy set to commence December 1, 2009. The monthly rent was \$950.00 due on the 1st day of every month. The tenant had paid a \$475.00 security deposit. The tenant failed to pay rent for June 2010 and the landlord served the tenant with a 10 Day Notice to End Tenancy on June 2, 2010. The tenant did not pay the outstanding rent and on June 25, 2010 the landlord made this Application for Dispute Resolution.

On July 7, 2010 the landlord made an application for an Order for an early end of tenancy and the Order was granted and issued on July 27, 2010. On July 28, 2010 the landlord amended the application to include loss of rent for July and August 2010 and served the amended application upon the tenant as described in the Introduction. The tenant and the occupants vacated the rental unit in August 2010.

Analysis

Based upon the evidence presented to me, I am satisfied the tenant was responsible for paying the landlord rent in the amount of \$950.00 per month in accordance with the tenancy agreement. I am satisfied the tenant did not pay rent and continued to occupy the rental unit in June, July and August 2010; therefore, I find the landlord entitled to recover unpaid and loss of rent in the amount claimed of \$2,850.00 (\$950.00 x 3 months).

As the landlord was successful with this application I further award the filing fee to the landlord. The landlord is permitted to retain the security deposit in partial satisfaction of the rent owed the landlord.

I provide a Monetary Order in the net amount of \$2,425.00 (\$2,850.00 + 50.00 – 475.00) to serve upon the tenant. The Monetary Order must be served upon the tenant and may be filed in Provincial Court (Small Claims) to enforce the Monetary Order as an Order of the court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order to serve upon the tenant for the balance of unpaid rent in the amount of \$2,425.00.

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: August 20, 2010.

Dispute Resolution Officer