



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, CNR, O, FF

Introduction

This hearing dealt with cross applications. The tenant applied to cancel a Notice to End Tenancy for unpaid rent. The landlords applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authority to retain the security deposit. Both parties requested recovery of the filing fee paid for their respective applications. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party. Both parties confirmed service of the applications. I determined that the landlord's amended monetary claims and evidence had not been served upon the tenant and I did not allow the request to amend the landlord's application. Rather, the landlords retain the right to make a subsequent application for the damages not dealt with during this hearing.

As I heard the tenant vacated the rental unit August 4, 2010 I did not consider the tenant's application to cancel the Notice to End Tenancy or the landlord's application for an Order of Possession any further. Accordingly, the only remaining issues to address with this hearing were unpaid rent and damage to a granite countertop.

Issues(s) to be Decided

1. Have the landlords established an entitlement to unpaid or loss of rent?
2. Have the landlord established a claim for damage to a granite countertop?

Background and Evidence

I heard undisputed evidence as follows. The month-to-month tenancy commenced January 1, 2010 and the tenant paid a \$750.00 security deposit in December 2009. The tenant was required to pay rent of \$750.00 on the 1st day of every month. The tenant did not pay rent on June 1, 2010 when due. Rather, the tenant paid \$275.00 on June 4, 2010 and \$40.00 on June 9, 2010. The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the rental unit door on June 16, 2010. The tenant disputed the Notice.

The landlord testified that the tenant vacated the rental unit August 4, 2010. The tenant initially confirmed that he vacated August 4, 2010 and then changed his testimony to August 2, 2010. The landlord refuted the tenant's statement by claiming the tenant returned the key on August 4, 2010 on the bus and left a voicemail for the landlords on August 4, 2010 to throw out the remainder of his possessions. I heard the rental unit is still vacant.

In making this application, the landlord is seeking to recover the unpaid portion of June's rent plus loss of rent for July and August 2010. In addition, the landlord claimed \$1,000.00 as an estimate of the damage caused to the granite countertop. The landlord described how the unit was new at the beginning of the tenancy and that a light fixture over the countertop was not working. The tenant had offered to fix the light fixture and the landlord alleges the tenant stood on the countertop and cracked it. Upon enquiry, the landlords acknowledged that a move-in inspection report was not prepared.

The tenant stated that he was entitled to deduct \$375.00 from June rent since the landlords overcharged the security deposit and to deduct \$60.00 for having to change the locks to the rental unit. The tenant claimed the landlord took the tenant's key and FOB. The landlord denied taking the tenant's key and FOB.

The tenant's witness claimed she had paid the landlord rent for July 2010 by way of cash at a Skytrain station on July 1, 2010. The landlord denied the tenant's witness paid him any money for July's rent. Rather, the landlord acknowledged meeting the witness at the Skytrain station months before.

The tenant alleged the rental unit had been occupied prior to his tenancy and that the granite countertop was cracked when his tenancy began. Tenant denied standing on the granite countertop. Upon enquiry, the landlords stated the unit was new when they purchased in September 2009 and that the tenant was the first occupant.

Analysis

The Act provides that a landlord must not require a security deposit in excess of one-half of a month's rent. Where a landlord collects more than that amount the tenant is permitted to deduct the overage from rent payable. Upon review of the tenancy agreement, I find the landlords did collect a security deposit that exceeded one-half of a month's rent. Therefore, the tenant was entitled to deduct \$375.00 from June's rent.

With respect to the tenant's assertion that he had to change locks, I found the disputed verbal testimony insufficient to determine the tenant's key and FOB had been taken by the landlord. Nor did the tenant provide sufficient evidence of the cost of replacement of the key and FOB. Therefore, I do not find the tenant entitled to deduct \$60.00 from rent payable for the cost of replacement keys and FOB.

In accordance with the above finding, the landlord entitled to recover \$60.00 for unpaid rent for June 2010. I find the tenant's disputed verbal testimony did not satisfy me that any money was paid for July 2010 and since the tenant occupied the rental unit in July 2010 I find the landlords entitled to \$750.00 for loss of rent for July 2010. With respect to loss of rent for August 2010 I prefer the landlords' testimony that the tenant vacated the rental unit August 4, 2010 as the landlords' version of events was consistent and detailed in comparison to the tenant's version. I also accept that the landlords did not

have prior knowledge as to when the tenant would be vacating the rental unit. Therefore, I find the tenant's actions caused the landlord to incur a loss of rent for August 2010.

With respect to the cracked countertop, in the absence of documentary evidence I find there is insufficient evidence for me to conclude when the crack occurred, the cause of the crack, or the devaluation or cost to repair the countertop. Therefore, I dismiss the landlord's claim for damages to the countertop.

I award the cost of the filing fee to the landlords. I authorize the landlords to retain the tenant's security deposit of \$375.00 in partial satisfaction of the amounts owed to the landlords. I provide the landlords with a Monetary Order calculated as follows:

Unpaid rent – June 2010	\$ 60.00
Loss of rent – July 2010	750.00
Loss of rent – August 2010	750.00
Filing fee	50.00
Less: security deposit	<u>(375.00)</u>
Monetary Order for landlords	\$1,235.00

The landlords 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 tenancy has ended and the tenant's application was dismissed. The landlords were provided the authority to retain the tenant's security deposit and were provided a Monetary Order for the balance owing of \$1,235.00 to serve upon the tenant.

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 24, 2010.

Dispute Resolution Officer