



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's amended application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; damages or loss under the Act, regulations or tenancy agreement; authorization to retain the security deposit; and, recovery of the filing fee. The tenant did not appear at the hearing. The landlord's agent testified that the tenant was served with notification of this hearing by personal delivery on August 21, 2010. The landlord's agent testified that the landlord's amended application and evidence was served upon the tenant personally on September 10 or 11, 2010 while the tenant was working. I accepted the agent's testimony and found the tenant was sufficiently served with notification of this hearing and the claims against the tenant. Therefore, I proceeded to hear from the landlord's agent in the absence of the tenant.

The landlord's agent informed me that the tenant has vacated the rental unit and an Order of Possession is no longer required. Accordingly, I do not provide one with this decision.

Issues(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent?
2. Has the landlord established an entitlement to damage or loss under the Act, regulations or tenancy agreement?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

I was provided the following undisputed evidence. The tenancy commenced July 2, 2010. The tenant vacated August 21, 2010. The tenant rented a room in a condominium with two other tenants under separate tenancy agreements with the landlord. The tenant was required to pay rent of \$575.00 on the 1st day of every month. The tenant paid a \$287.50 security deposit. The written tenancy agreement provides for a late fee of \$25.00 per occurrence. The landlord and tenant participated in a move-in and move-out inspection together. The condition inspection report was signed by both parties; however, the tenant does not indicate whether she agrees or disagrees with the landlord's assessment of damages in the space provided.

The landlord's agent submitted that the tenant failed to pay rent for August 2010 and provided evidence of a 10 Day Notice to End Tenancy for Unpaid Rent served upon the tenant. The landlord's agent submitted that the tenant has given written authorization for the landlord to retain the security deposit for any liabilities for rent and utilities.

The landlord made an amended monetary claim for the following amounts:

Unpaid rent – August, September & October	\$ 1,725.00
Late fee – August, September & October	75.00
Hydro for July 2 – August 21, 2010	11.60
Cockroach treatment	201.60
Filing fee	50.00
Less: security deposit	<u>(287.50)</u>
Total claim	\$ 1,775.70

With respect to the cockroaches the landlord's agent submitted that cockroaches may enter a rental unit by way of people's personal property and can be picked up on one's

clothing anywhere there are cockroaches, such as in a restaurant. Upon enquiry, the landlord's agent acknowledged that any one of the tenants living in the condominium could have brought in cockroaches; however, the landlord suspects the tenant brought them in because they did not exist in the condominium before the tenancy began.

The landlord's agent explained that advertising efforts consisted of on-line postings and that loss of rent for the months of September and October 2010 is being claimed as all prospective tenants became uninterested in renting the unit when learning of the cockroach infestation. I heard that initially the landlord attempted to treat the infestation with over-the-counter pesticides; however, those efforts merely made the cockroaches retreat and then emerge later. Three treatments have been applied by a professional starting September 1, 2010 with the final spraying just completed recently.

Provided as documentary evidence were copies of the tenancy agreement, 10 Day Notice, tenant's authorization for retention of the security deposit, condition inspection report, and invoice for cockroach treatment.

Analysis

Under the Act, a tenancy may end in various ways. In a month-to-month tenancy the tenant is required to give at least one full month of written notice. Where a tenancy is to end on a fixed date and the tenant vacate by that date, the landlord is not entitled to receive a tenant's notice to end tenancy and the tenant simply vacates by the expiry date.

Upon review of the written tenancy agreement I noted several deficiencies. The tenancy agreement does not appear to be signed by the tenant. The tenancy agreement does not indentify when the tenancy was set to commence. Also, the tenancy agreement indicates the tenancy is for a fixed term and that the tenant will have to vacate at the end of the fixed term; however, the expiry date of the fixed term is not

indicated. Accordingly, I find insufficient evidence as to when the tenancy was to end under the fixed term.

I was provided testimony that the tenant resided in the rental unit in August 2010 and had not paid rent for August 2010 which resulted in the landlord serving a 10 Day Notice indicating \$575.00 was outstanding as of August 1, 2010. I am satisfied the landlord is entitled to unpaid rent for August 2010. However, given the deficient tenancy agreement I am unable to conclude the landlord was entitled to rent for September 2010 or later. Therefore, I award the landlord unpaid rent for August 2010 and proceed to consider whether the landlord is entitled to loss of rent for subsequent months due to the cockroach infestation.

Since cockroaches may enter a rental unit in any number of ways and on any person's belongings or clothing, I am unable to conclude that the tenant is responsible for the cockroach infestation given that two other people were residing in the rental unit at the same time the tenant was. Nor did the landlord provide evidence of his advertising efforts to establish he took every reasonable step to minimize his losses. Therefore, I dismiss the landlord's claim for cockroach treatment or loss of rent.

The tenant's written authorization to retain the security deposit refers to a liability for utilities and I am satisfied the tenant had agreed to pay for utilities. Therefore, I award the landlord \$11.60 for the tenant's portion of hydro during the time she resided in the rental unit.

I do not award the landlord late fees as this is a term that appears in the unsigned tenancy agreement that had an unknown expiry date. Therefore, I am not satisfied the tenant had agreed to such a term.

As the landlord established an entitlement to unpaid rent for August and utilities I award the filing fee to the landlord. I also authorize the landlord to retain the security deposit in partial satisfaction of the unpaid rent and provide a Monetary Order calculated as follows:

Unpaid rent – August 2010	\$ 575.00
Utilities	11.60
Filing fee	50.00
Less: security deposit	<u>(287.50)</u>
Monetary Order	\$ 349.10

The landlord must serve the Monetary Order upon tenant and may file it in Provincial Court to enforce as an Order of that court.

Conclusion

The landlord was partially successful in this application. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$349.10 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: October 12, 2010.

Dispute Resolution Officer