



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MND, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenant was obligated to pay \$1,300.00 per month in rent and that he did not pay rent in the month of September. The landlord claimed that in addition to not paying rent for September, the tenant had also brought forward \$1,580 in arrears from previous months. The landlord claimed that he was unable to re-rent the unit for October because he could not afford to perform repairs and testified that the tenant had broken a window, damaged the front door, stained the carpet, damaged an inside door and frame and left a significant number of items in and outside the rental unit.

The tenant claimed that he had paid rent prior to September but the landlord insisted that rent be paid in cash and did not issue receipts. The tenant claimed that the landlord had agreed that he could leave his refrigerator behind to fully satisfy all arrears. The tenant further claimed that he had left behind a washer and dryer which he valued at \$150.00 and that the landlord should apply the value of those appliances to cover the

cost of repairs. The tenant acknowledged responsibility for the broken window but denied responsibility for other damage.

The landlord testified that he gave receipts “sometimes” and testified that he had copies of all receipts given to the tenant and also had a book in which he kept note of all payments made. The landlord acknowledged that the tenant told him he was leaving the refrigerator but testified that there was no agreement between the parties that the refrigerator was to compensate the landlord for rental arrears.

The landlord seeks to recover arrears and loss of income for the month of October totalling approximately \$4,000.00 and the cost of repairs which he estimates at \$1,000.00.

Analysis

First addressing the question of arrears prior to September, when a landlord alleges that rent has not been paid, the tenant bears the burden of proving that rent has been paid. The tenant claimed not to have been given receipts and the landlord acknowledged that he only gave receipts sometimes. I find that the landlord’s practice of demanding rent in cash and failing to consistently give receipts has deprived the tenant of the opportunity to defend the landlord’s claim against him. Although the landlord claimed to have kept careful record, he did not submit those records into evidence. I find that the landlord has failed to prove that arrears were owing prior to September and accordingly I dismiss that claim.

The tenant acknowledged that he did not pay rent for the month of September. Although he claimed to have entered into an agreement with the landlord whereby the refrigerator would compensate the landlord for rent owing, the landlord denied having entered into such an agreement. The tenant bears the burden of proving that he was excused from paying rent for the month of September and I find that he has not met that burden. I award the landlord \$1,300.00 in rent for the month of September.

I find that the landlord could not have re-rented the unit while the tenant was still living therein and I find that the tenant must be held liable for rent for the first half of October. I award the landlord \$650.00 for loss of income for October. I dismiss the claim for loss of income for the last half of October as the landlord had an obligation to minimize his losses and I find he failed to do so as he did not clean and repair the rental unit and there is no evidence that he made any attempt whatsoever to re-rent it.

The landlord testified that repairs and cleaning were required at the end of the tenancy and estimated that those repairs would cost approximately \$1,000.00 to perform. However, the landlord provided no written estimates of the cost to perform repairs, no quotations regarding the cost of replacing broken items and no photographs to show the condition of the unit. Further, the landlord did not provide condition inspection reports showing the condition of the unit at the time of the beginning and end of the tenancy. I find that the landlord has provided insufficient evidence to prove his claim and I dismiss the claim for the cost of repairs.

I find that the landlord is entitled to recover the \$50.00 filing fee paid to bring this application and I award him \$50.00.

The landlord acknowledged that the tenant left a refrigerator and washer and dryer in the rental unit and confirmed that he would keep the appliances. While usually items left behind by a tenant are not credited to any debt owing, because the landlord confirmed that he would be using the appliances and because he acknowledged that they had value, I find that the tenant is entitled to be credited with the value of the appliances. The parties appeared to agree that the washer and dryer have a value of \$150.00. The tenant claimed that the one year old refrigerator was worth \$1,100.00 but the landlord valued it at \$200.00. I find that the washer and dryer have a value of \$150.00. I find it likely that the tenant would overvalue the refrigerator and that the landlord would undervalue it. Without supporting evidence to show the value of the appliance, I find it reasonable to ascribe a \$500.00 value to the refrigerator. The tenant is credited with \$650.00 for the appliances.

Conclusion

The landlord has been awarded \$2,000.00 which represents \$1,300.00 in unpaid rent for September, \$650.00 in loss of income for the first two weeks of October and \$50.00 for the filing fee. I deduct \$650.00 from the award to reflect the value of the appliances left behind and I grant the landlord a monetary order under section 67 for the balance of \$1,350.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: November 03, 2010

Dispute Resolution Officer