



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy.

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

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; 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 38, 46, 55, 67, and 72 of the *Residential Tenancy Act* (Act).

It must also be decided if the tenant is entitled to cancel the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Act*.

Background and Evidence

The parties agree the tenancy began in May 2009 but most of the other details of the tenancy are disputed by the parties. The landlord states that the tenancy began with the tenant only responsible for the upper unit at \$700.00 per month and a security deposit of \$300.00 was paid.

After the tenancy began, the landlord contends, it was changed to be for the whole house and the tenant is responsible for \$1,250.00 per month with the tenant responsible for renting out the basement rental unit if he wants but the tenant is responsible for the full amount.

The tenant contends that tenancy is for the upper part of the house only for a monthly rent of \$650.00 and that he offered to act as an agent for the landlord to assist the landlord in renting out the lower unit. He states that he found sub-tenants for the landlord and that when they moved in they provided the tenant with a security deposit of \$300.00 that he paid the landlord.

The landlord states that the tenant provided them with the additional security deposit because he was taking over the full house. The tenant stated that when the sub-tenants moved out he refunded them their security deposit but has not received anything from the landlord for the same.

The tenant states that when the sub-tenants gave a month's notice to end the tenancy in September, 2010 that he informed the landlord. The landlord denies being told of a one month notice until just a few days before the sub-tenants moved out.

The landlord has submitted into evidence a document entitled "Rental Agreement" that names the tenant; provides the address and then lists 7 rules and regulations, one applicable rule is that rent is due on the 26th of each month. In the upper right hand corner of the document is handwritten "full house \$1250" and in the lower right hand corner is handwritten "damage deposit \$620.00".

The landlord has submitted one rent receipt dated June 29, 2009 "for the month of July" in the amount of \$1,250.00. The tenant states that the landlord has never provided them with receipts and does not know where this one came from. The landlord stated that they had copies of receipts for the entire tenancy. No other receipts were provided into evidence.

Both parties provided copies of "Notice to End a Residential Tenancy" documents, although they are distinct notices and are different from each other. The documents themselves are not the approved forms required under Section 52 of the *Act*.

The tenant has also submitted a handwritten summary of issues as he sees them and a Ministry of Housing and Social Development Shelter Information form dated June 1, 2009 that lists suite number as "House" then that is crossed out and it states "Upstairs" and under client's portion of rental amount it states \$1,250.00 which is crossed out and it states \$625.00. Under the heading of client's portion of security deposit it states \$625.00 that is also crossed out. None of these changes are initialled by anyone.

The landlord is claiming unpaid rent in the amounts of \$600.00 for October, 2010; \$1,250.00 for each of November and December 2010. The landlord stated that the tenant provided only \$650.00 for October rent and tried to pay \$650 in November, 2010 but the landlord did not accept this payment as he wanted the full rent for the house. The tenant contends he owes the landlord only for November and December in the total amount of \$1,300.00.

Analysis

Section 46(1) of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a dated that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(2) stipulates that this notice must be compliant with Section 52 of the Act. Section 52 states that, among other things, when the notice is given by the landlord it must be in the approved form.

As the landlord failed to use the current approved form to end the tenancy, I find the landlord has, in issuing this notice to the tenant, failed to comply with Section 52 of the Act, and therefore I grant the tenant's Application to cancel the notice to end tenancy and find the tenancy in full force and effect.

In order to be successful in a claim for compensation of loss the party making the claim has the burden of providing sufficient evidence to prove the following 4 points:

1. That a loss exists;
2. That that loss results from a violation of the Act, regulations or tenancy agreement;
3. The value of the loss; and
4. The party has taken all reasonable steps to mitigate any loss.

In the case of verbal agreements, I find that where verbal terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

Despite the landlord's claims that he has receipts for the duration of the tenancy, I have very little documentary evidence from either party to support their claim to the amount of rent that was agreed upon for this tenancy.

In considering the landlord's "Rental Agreement" I find the notation of rent over to the side and unacknowledged by the parties (i.e. initialed by) renders this document as an unreliable record of what may have been agreed upon.

In addition, when I consider the tenant's submission of the Shelter Information form the alterations are unacknowledged, however; in this case the document was completed by the landlord and the alterations change what was originally listed as the address (full house); the rental amounts (\$1,250.00); and the security deposit amount (\$625.00).

The only unaltered document is a rent receipt that the tenant states he has never seen and that the landlord has always failed to issue receipts, while the landlord states he issues receipts every month.

I find, based on the consideration of *all* of the documents submitted by both parties, I accept that in combination, the rent receipt and the "Shelter Information" form, prior to alteration, indicate the value of rent that was agreed upon.

Based on the balance of probabilities, I find the rent for this residential property which includes possession of both rental units to be \$1,250.00 per month.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,150.00** comprised of \$3,100.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$620.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,530.00**. 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.

As the landlord was only partially successful in his application, I dismiss his application to recover the filing fee for this hearing from 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: December 03, 2010.

Dispute Resolution Officer