Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes   MNR, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution for a monetary Order for unpaid rent and to recover the filing fee for the Application.

Although served with the Application for Dispute Resolution and Notice of Hearing on December 4, 2010, in person by the Landlord's Agent, the Tenant did not appear.

The Landlord's Agent appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

On a procedural note, the Landlord listed two Tenants; however there is only one Tenant listed in the Tenancy Agreement. The second person is an occupant and therefore the Decision is made applicable to the person listed in the tenancy agreement.

Issue(s) to be Decided

Has the Tenant breached the *Residential Tenancy Act* (the "*Act*") or tenancy agreement, entitling the Landlord to an Order for monetary relief for unpaid rent and to recover the filing fee?

Background and Evidence

The Landlord received an order of possession from the Residential Tenancy Branch via direct request on November 22, 2010. Despite this, the Tenant did not vacate the rental unit until January 14, 2011. Monthly rent was $1,100.00 and the security deposit was set off by the amount of the monetary order granted via direct request.

The Landlord's Agent testified and supplied evidence that the Tenant had failed to pay rent for January, April, May, August, September and November 2010. The Landlord is

claiming unpaid rent for those months in the amount of $6,600.00 as well as $50.00 for NSF fees for each of the months, in the amount of $300.00.

Analysis

Based on the testimony, evidence, and a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, based on a balance of probabilities.

First, proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Through the testimony and evidence, I find that the Landlord has established a total monetary claim of **$6,700.00** comprised of outstanding rent of $6,600.00 for January, April, May, August, September and November 2010 and the $100.00 fee paid by the Landlord for this application.

Residential Tenancy Branch Regulation 7 (1) (d) sets the allowable amount a Landlord may charge a tenant for a return of a tenant's cheque by a financial institution at $25.00. As the term in the tenancy agreement requiring the Tenant to pay $50.00 for an NSF fee contravenes the Regulation, I **dismiss** the Landlord's claim for $300.00.

I **grant** the Landlord an order under section 67 for **$6,700.00.**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Landlord's Agent testified that the Tenant still owed for a portion of October 2010, and all of December 2010, and did not pay rent in January 2011. However, the Landlord's application did not address these matters and I have not considered them. The Landlord is at liberty to reapply for any remaining sums not specifically addressed in this Decision.

Conclusion

The Landlord is granted a monetary order in the amount of $6,700.00.

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: April 08, 2011.

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Residential Tenancy Branch