



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order for unpaid rent and to recover the filing fee.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and make submissions to me.

On a preliminary note, the tenant stated and the landlord's agent confirmed that the tenant had previously vacated the rental unit and therefore, the landlord no longer required an order of possession. As a result, I have amended the landlord's application to exclude a request for an order of possession.

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?

Background and Evidence

This month to month tenancy began on April 1, 2011, and ended on July 1, 2011, when the tenant vacated the rental unit. The monthly rent was \$1,850.00 and a security deposit of \$925.00 was paid by the tenant on or about April 1, 2011.

The landlord gave affirmed testimony and supplied evidence that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on June 3, 2011, via personal delivery. The Notice stated the amount of unpaid rent was \$1,850.00 as of June 1, 2011. The tenant disputed that the Notice was delivered via personal delivery, instead stating that it was served by a young teenager to the tenant's wife.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

The landlord's agent stated that the tenant now owes rent of \$1,850.00 for July and owes a total of \$3,700.00 in unpaid rent.

The tenant agreed that rent for June was not paid, but said that he and the landlord had discussed him moving out due to the home being foreclosed upon. The tenant also stated he had text messages from the landlord to "forget about rent." However, the tenant supplied no documentary evidence. The tenant further submitted he moved out on the date he and the landlord discussed.

Analysis

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

I accept that the tenant was served a 10 Day Notice to End Tenancy, has not paid the outstanding rent, did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find the tenant provided sufficient differing testimony to cast doubt on the landlord's claim for the July rent. Additionally I have no evidence that the landlord attempted to mitigate a potential loss of rent for July and that the month has not yet ended.

I therefore find the landlord's claim loss of income for the July 2011, is premature.

I find that the landlord has established a total monetary claim of **\$1,900.00** comprised of outstanding rent of **\$1,850.00** for June 2011, and the **\$50.00** fee paid by the Landlord for this application.

At the landlord's request, I allow the landlord to retain the security deposit of \$925.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$975.00**.

I am enclosing a monetary order for \$975.00 with the landlord's Decision. This order is a **final, legally binding order**, and may be filed in the Provincial Court (Small Claims) should the tenant fail to comply with this monetary order.

For the reasons cited above, I **dismiss** the landlord's claim for unpaid rent for July 2011, **with leave to reapply**.

Conclusion

The landlord is granted a monetary order for the amount of **\$975.00**.

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: July 14, 2011.

Residential Tenancy Branch