



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord, the tenant and the occupant of the rental unit.

Issue(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)*.

Background and Evidence

The tenancy began on November 1, 2010 as a month to month tenancy for a monthly rent of \$1,200.00 due on the 1st of each month plus utilities and a security deposit of \$600.00 was paid.

The landlord submitted the following documentary evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on June 29, 2011 with an effective vacancy date of July 8, 2011 due to \$2,800.00 in unpaid rent and \$415.90.

The tenant testified that she actually moved out of the rental unit at the end of November and her ex boyfriend remains in the rental unit. The landlord testified he did not know who the person was but that the occupant and he agreed to change the rent to be \$1,400.00 per month that would include utilities.

The landlord's Application for Dispute Resolution states the occupant failed to pay the full rent owed for the months of May, June, and July and utilities prior to May 2011 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on June 29, 2011.

The occupant testified that he paid rent to the landlord for both May and June 2011 in cash but that the landlord failed to issue him a receipt. The tenant testified that she

tried to pay the landlord for utilities but he refused the payment. The occupant testified that he had not paid rent for July or August as he was waiting for the outcome of this hearing.

Analysis

Despite the landlord's testimony that he entered into a verbal agreement with the occupant of the rental unit to change the rent amount, I find the occupant has no authority to change the tenancy agreement that was signed by the landlord and the tenant.

As a result and as the landlord has issued a 10 Day Notice to End Tenancy for Unpaid Rent based on the amount he determined with the occupant, I find the 10 Day Notice issued by the landlord on June 29, 2011 to be ineffective as it indicates the tenant owes an amount of rent that is not in accordance with the tenancy agreement.

In the case of verbal testimony, I find that where testimony is clear and both the landlord and tenant agree on the interpretation of events, there is no reason why the evidence cannot be reliable. However when the parties disagree with what occurred, the verbal testimony in the absence of any documentary evidence is virtually impossible for a third party to rely upon when trying to resolve disputes as they arise.

In this case, the landlord has the burden to provide sufficient evidence to support his claim, however as the landlord has provided no documentary evidence of the tenant or occupants payment or lack of payment for the months of May and June 2011, I find the landlord has failed to establish the tenant owes the landlord rent for those months.

I also note the landlord has failed to provide any evidence of any utility charges for the period prior to May 1, 2011 or for any other period. I dismiss the portion of the landlord's Application seeking compensation for utilities.

However, as the occupant has testified that he has not paid the landlord rent for the months of July and August 2011 as he was awaiting the outcome of this hearing I find the tenant does owe the landlord rent for these two months.

I also order the landlord to issue rent receipts to the tenant and provide them to the tenant for each rental payment when made.

Conclusion

For the reasons noted above I find the landlord is not entitled to an order of possession effective. I therefore dismiss this portion of the landlord's Application.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,400.00** comprised of rent owed. This order must be served on the tenant. If the tenant fails to comply with this order the landlord

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

As the landlord was only partially successful in his Application I dismiss his request to recover the filing fee for the cost of his Application 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: August 08, 2011.

Residential Tenancy Branch