



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, MNDC, FF
Tenant: CNR, O

Introduction

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

The hearing was conducted via teleconference and was attended by one of the landlords and the tenant.

The parties agreed the tenant vacated the rental unit on or before September 16, 2011 and as such there is no longer a need for an order of possession. I amend the landlord's application to exclude matters related to possession.

As the tenant has moved out of the rental unit, the tenant acknowledges there is no longer a need to adjudicate her Application to cancel the notice to end tenancy and her Application is withdrawn.

The landlords seek to amend their application to include matters related to the condition of the rental unit at the end of the tenancy and have submitted evidence in support of that claim. However, the tenant has not provided the landlord with a forwarding address and the tenants have not been served with an amended Application for Dispute Resolution, as such I decline the landlord's amendment.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for lost rental income; 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, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on July 1, 2011 as a month to month tenancy for the monthly rent of \$900.00 due on the 1st of the month with a security deposit of \$450.00 paid.

The parties also agree the tenant failed to pay rent on September 1, 2011 when it was due. The tenant provided into evidence a letter from her employer indicating that there had been a problem with their payroll and the tenant's paycheck had been delayed until September 15, 2011.

The tenant testified that she moved out on September 15, 2011 and she felt the landlord could keep the security deposit for the ½ month rent for September 2011. The tenant confirms that she did not pay any other rent.

The landlord testified that the rental unit required some repairs including filling nail holes and painting and that they advertised on two local websites to re-rent the unit starting on October 5, 2011.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 26 of the *Act* requires rent to be paid when it is due under the tenancy agreement. As per the testimony of both parties I accept the tenant did not pay the rent for September 2011 and as such I find the landlord suffered a loss.

I also find the non-payment of rent by the tenant constitutes a violation of Section 26 of the *Act* and that from the terms of the tenancy agreement I am satisfied the landlord has established the value of that loss at \$900.00. And finally, in the case of non-payment of rent, I find there are no steps required to be taken by the landlord to mitigate any loss.

However, in relation to the landlord's claim for lost rental income for the month of October 2011, I accept the tenant's position that if the landlord failed to advertise the rental unit's availability as soon as they were aware the tenant was or had vacated, the landlord did not take all reasonable steps to mitigate the damage or loss.

Regardless of the condition of the rental unit or its need for some repairs, the landlord has not provided any justification that the unit could not have been advertised prior to October 5, 2011. As such, I find the tenant cannot be held responsible for rent for the month of October 2011.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$950.00** comprised of \$900.00 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 \$450.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$500.00**. 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.

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: October 07, 2011.

Residential Tenancy Branch