



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: OPR, MNR, FF

Introduction

This was a re-hearing on the landlord's Application for Dispute Resolution seeking landlord for an Order of Possession and a monetary order for rental arrears based on a Ten Day Notice to End Tenancy for Unpaid Rent. The matter was previously determined through a Direct Request process on September 22, 2011 in which the landlord was awarded an Order of Possession and a monetary order for rent owed. However, the tenant made a successful application to have the matter reheard at a participatory hearing, which is before me now. The original orders were suspended pending the outcome of this hearing.

Both parties appeared and advised that the tenant vacated the unit on October 3, 2011. Therefore the landlord's request for an Order of Possession is now moot.

Issue(s) to be Decided

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for rental arrears owed.

Background and Evidence

The landlord testified that the tenancy began on May 1, 2011 for a two-year fixed term and the current rent was \$1,200.00. A security deposit of \$500.00 was paid. The landlord submitted a copy of the Ten Day Notice to End Tenancy for Unpaid Rent and a copy of the tenancy agreement into evidence.

The landlord testified that, in September, the tenant fell into arrears for \$500.00 and was issued a Ten Day Notice to End Tenancy for Unpaid Rent. The landlord testified that this Notice was served on the tenant on September 3, 2011. However, the tenant testified that it was served on September 11, 2011. The landlord was seeking a monetary order for rental arrears.

The tenant acknowledged falling into arrears of \$500.00 owed for rent, but stated that this was due to the fact that she was required to set up gas and hydro utilities in her name, despite the fact that these services were for two separate rental units. The tenant testified that, because of this unconscionable term in the tenancy agreement, she had

no choice but to withhold rent in order to pay two enormous utility deposits of \$900.00 each to have both services connected in her name. The tenant testified that, when she tried to discuss the unexpected expenditures with the landlord, he told her to leave if she didn't like the utility arrangement.

Analysis

Based on the testimony of the landlord and the tenant, I find that the tenant was properly served with a Notice to End Tenancy for Unpaid Rent.

With respect to the tenant's allegation that a term in the tenancy agreement unfairly required her to pay utilities for another unit, I find that this is not a matter relevant to the issue before me relating to the unpaid rent. Section 26 states that rent must be paid, whether or not the landlord has otherwise complied with the Act or agreement.

With respect to the landlord's testimony regarding loss of revenue due to the early termination of the fixed term, I find that this matter is not relevant to the issue at hand, that being rental arrears owed by the tenant based on the Ten Day Notice to End Tenancy for Unpaid Rent .

However, both the tenant and the landlord are each at liberty to pursue applications for dispute resolution with respect to these or any other issues that arose in this tenancy.

In the matter before me, however, I find that the tenant has not paid the outstanding rent, nor did the tenant apply to dispute the Notice. Given the above, I find that the landlord is entitled to monetary compensation of \$500.00, comprised of rental arrears still owed for September 2011.

Conclusion

I hereby grant the Landlord's application and order that the landlord retain the tenant's security deposit of \$500.00 in full satisfaction of this claim. Accordingly, I cancel the previously issued monetary order dated October 12, 2011.

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 24, 2011.

Residential Tenancy Branch