

DECISION

Dispute Codes OPR, MNR, MNDC, OLC, ERP, RP, PSF, FF

Introduction

There are applications filed by both parties. The Landlord has applied for an order of possession resulting from a 10 day notice to end tenancy for unpaid rent, a monetary order request for unpaid rent and recovery of the filing fee. The Tenant has applied for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee, an order for the Landlord to comply with the Act, make emergency repairs for health or safety reasons, make repairs to the unit, site or property and provide services or facilities required by law.

At the beginning of the hearing both parties stated that the Tenant vacated the rental unit in response to the Landlord's notice to end tenancy for unpaid rent and that the Landlord currently has possession of the rental unit. As such, the Landlord's claim for an order of possession was withdrawn by the Landlord. As well, the Tenant's claim for the Landlord to comply with the Act, make emergency repairs, make repairs and provide services or facilities is withdrawn as the Tenant no longer resides at the rental property.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent?

Is the Tenant entitled to a monetary order for money owed or compensation?

Background and Evidence

This Tenancy began on October 1, 2011 on a fixed term tenancy for 2 years until September 13, 2011 as shown in the submitted copy of the signed tenancy agreement. The monthly rent is \$1,700.00 payable on the 1st of each month and a security deposit of \$850.00 was paid on September 28, 2011. A condition inspection report for the move-in was completed, but a condition inspection report for the move-out was not.

The Landlord claims that the Tenant was served with the 10 day notice to end tenancy for unpaid rent on November 2, 2011 by registered mail. The Landlord has included the Canada Post Registered Mail Receipt in evidence. The Tenant confirms receiving the notice. The Landlord states that the Tenant failed to pay rent of \$1,700.00 for November 2011 and placed a stop payment on a post dated cheque that was given to the Landlord. The Tenant confirms not paying the rent. The Tenant states that he had

reasons to withhold the rent and that he did not withhold the rent, but placed it in trust with his father.

The Tenant has made a claim for \$1,900.00 for money owed or compensation. The Tenant claims that the Landlord charged the Tenant a \$200.00 processing fee for their application for tenancy. The Tenant has provided into evidence a receipt issued by the Landlord. The Landlord states that it is not an application fee, but an administration fee for reviewing the Tenant's application for tenancy and their suitability.

The Tenant is also seeking to claim \$1,700.00 in the recovery of the October 2011 rent. The Tenant claims multiple issues with the tenancy that the Landlord has failed to address during his tenancy. The Tenant claims that there were major leaks in the pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, no heat from the oil furnace, damaged or defective locks to the main access door to the rental and problems with the electrical systems. The Tenant has provided two letters to the Landlord about these issues at the rental unit. The Landlord disputes the Tenant's claims. The Landlord cites the condition inspection report for the move-in which the Tenant signed before taking possession of the rental unit. The Tenant states that the issues with the broken door, non-function furnace and the non-functioning stove were not apparent during the inspection. The Landlord states that he responded to the Tenant's earliest letter dated October 11, 2011, but that the Tenant wanted to "immediately" end the 2 year fixed term tenancy. The Landlord states that they were trying to address the issues brought up by the Tenants, but were unable to come to a solution as the Tenant's did not want rescind their notice to immediately end the tenancy. The Tenant states that he was living in the rental unit every day, but did not sleep at the unit for approximately a 2 week period.

Analysis

As both parties have attended the hearing and have made detailed reference to the notice of hearing and evidence packages of the other, I am satisfied that each party has been properly served.

Section 26 of the Residential Tenancy Act states,

Rules about payment and non-payment of rent

- 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

On this basis, the Tenant has confirmed not paying rent and did not have an order providing that rent could be withheld, I am satisfied that the Landlord has established his claim for unpaid rent of \$1,700.00. The Landlord is also entitled to recovery of the \$50.00 filing fee.

Section 15 of the Residential Tenancy Act states,

Application and processing fees prohibited

15 A landlord must not charge a person anything for

- (a) accepting an application for a tenancy,
- (b) processing the application,
- (c) investigating the applicant's suitability as a tenant, or
- (d) accepting the person as a tenant.

I am satisfied based upon the direct testimony of both parties that the Landlord contravened the Act by charging the Tenant a \$200.00 “administration fee”. The Tenant is entitled to the recovery of this amount.

I find that the Tenant has failed to establish a claim to recover the October 2011 rent of \$1,700.00. Although action was taken by both parties to address the issue, the Tenant’s notice to vacate the rental unit “immediately” did not allow the Landlord the opportunity to respond to the Tenants issues in a timely manner. I find that Tenant did not suffer the loss of what would constitute the entire rental unit for the month of October 2011 in order for him to recover the October 2011 rent. The Tenant has failed to establish a claim. This portion of the Tenant’s application is dismissed.

The Landlord is entitled to recovery of \$1,750.00 consisting of \$1,700.00 for November 2011 rent and the \$50.00 filing fee. The Tenant is entitled to recovery of \$250.00 consisting of recovery of the \$50.00 filing fee and the \$200.00 application fee imposed by the Landlord.

$$\$1,750.00 - \$250.00 = \$1,500.00$$

I order that the Landlord may retain the \$850.00 security deposit in partial satisfaction of the claim and I grant the Landlord a monetary order under section 67 for the balance due of \$650.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

$\$1,500.00 - \$850.00 = \$650.00$

Conclusion

The Landlord is granted a monetary order for \$650.00.

The Landlord may retain the \$850.00 security deposit.

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: November 25, 2011.

Residential Tenancy Branch