



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation for loss – Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on August 17, 2007 and ended on April 30, 2009. Rent in the amount of \$1,500.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$750.00.

The Landlord states that the Tenant failed to provide 30 days notice to end the tenancy and failed to pay rent for March and April 2009. The Landlord states that the Tenant

also failed to pay utilities owing. The Landlord states that the Tenant was owed monies arising from a flood that occurred in the unit during the tenancy and for other items that the Tenant provided to the Landlord. The Landlord disputes some of the credits claimed by the Tenant against the amount owing to the Landlord. The Landlord claims damages for unpaid rent, lost rental income to May 15, 2009 and unpaid utilities, less credits to the Tenant.

The Landlord supplied materials as evidence for the Hearing and those materials indicate that the Parties were attempting to resolve the dispute over the amounts owed to the Landlord and the amounts owed (or credited) to the Tenant. These materials include an email dated May 18, 2009 sent by the Landlord to the Tenant asking the Tenant to review the accounting of monies owed and credited, to revise an invoice and to forward a cheque as soon as possible. In return the Tenant revised the accounting to include credits that the Landlord had not included and sent a cheque for the full amount remaining outstanding to the Landlord. It is noted that the credits to the Tenant included the Landlord's retention of all of the security deposit.

The Landlord states that he cashed this cheque but that since the cheque did not state that the amount was a full and final settlement of the dispute, the Landlord accepted it only as a payment towards the amount claimed by the Landlord. The Landlord states that he did not send the Tenant a receipt for the cheque indicating acceptance as only payment towards the amount owing. The Landlord did send an email to the Tenant after this event, dated June 22, 2009, indicating his dispute of the Tenant's accounting and noting that the cheque was accepted as payment towards the amount owing to the Landlord.

Analysis

A compromise and settlement agreement has the same elements as a contract. In settling a debt for example, a party creates a conditional offer to settle when full payment is sent for a lesser amount than what is being claimed as a debt by the other party. If the other party accepts the full payment, that party is agreeing to forgive part of

the debt claimed. If the receiving party does not accept the payment, the offering party's offer to settle is rejected. The offer to settle is conditional on the acceptance of the offer and once accepted, the party accepting the offer no longer has recourse to a greater amount.

The materials supplied by the Landlord clearly indicate settlement negotiations between the Parties. It is further evident that the Tenant offered to settle the amount owing to the Landlord and sent a cheque in the amount offered by the Tenant. By cashing this cheque, I find that the Landlord accepted the Tenant's offer and that the Landlord can no longer seek additional monies. Accordingly, I dismiss the Landlord's application.

Conclusion

The Landlord's application is dismissed.

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 09, 2011.

Residential Tenancy Branch