



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, a monetary order for unpaid rent and the filing fee, and to keep all or part of the security deposit.

The Landlord was provided the Notice of Hearing on October 21, 2011 by our office, as detailed on the Notice of Hearing document. The Landlord provided affirmed testimony that the Tenant was served by registered mail with the Application for Dispute Resolution and Notice of Hearing on October 24, 2011. The Landlord provided the receipt and tracking slip from Canada Post as evidence. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter(s)

Based on the testimony and evidence of the Landlord, a 10 Day Notice to End Tenancy for non payment of rent was personally served on the Tenant on October 05, 2011 with a tenancy end date of October 15, 2011 specified on the Notice. The Landlord stated that when they performed an inspection of the rental unit on October 13, 2011, they found that the Tenant had already moved out and taken all of his belongings. The Landlord confirmed that they have possession of the rental unit. As the Tenant has vacated the rental unit an order of possession is no longer necessary. The Landlord's request for an order of possession is dismissed.

The Landlord has requested October and November's rent on their Application for Dispute Resolution. The Landlord stated that although they have had possession of the rental unit since October 13, 2011, they were not aware that they could advertise or rent the suite out, as they were waiting to see what the outcome of the Dispute Resolution hearing would be. I find that the Landlord has had since October 13, 2011 to look for new tenants and has failed to mitigate their losses. As a result of these

reasons, I dismiss the Landlord's request for rent for November without leave to reapply.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to a monetary order for unpaid rent for October 2011 and recovery of the filing fee?

Background and Evidence

The signed tenancy agreement between the parties was submitted in the evidence by the Landlord. The tenancy agreement states that the tenancy commenced on February 01, 2005, and rent is due on the first day of the month. The Landlord provided copies of their accounting ledger that showed that the Tenant had been paying monthly rent in the amount of \$836.00. The tenancy agreement states that the Landlord collected a security deposit of \$345.00 from the Tenant on January 05, 2005.

The Landlord testified that he personally served the Tenant with a 10 Day Notice to End Tenancy for non-payment of rent on October 05, 2011. The Landlord provided a copy of the 10 Day Notice to End Tenancy and a copy of a proof of service document with the Tenant's signature as evidence that the Tenant was personally served with the Notice on October 05, 2011.

The Landlord confirmed that the Tenant had vacated the rental unit by the time they inspected the suite on October 13, 2011, however he had only made payment of \$200.00 of the \$836.00 owed. The Landlord provided a copy of their ledger in evidence showing the payments made to date and the balance of the outstanding rent. The Landlord requests a monetary order for \$636.00 for the outstanding rent for October 2011. The Landlord confirmed that they currently hold the security deposit of \$345.00 plus accrued interest.

The Landlord has applied for reimbursement of the \$50.00 filing fee for this proceeding.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Notice to End Tenancy stated that the Tenant must vacate the rental unit by October 15, 2011, unless he paid his rent five days after receiving the Notice. The Landlord confirmed that the Tenant had vacated the rental unit by October 13, 2011.

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement submitted into evidence by the Landlord states that rent is due on the first of the month. I find that the Tenant failed to

pay his rent in full for October 2011, as he only paid \$200.00 to the Landlord. As a result I find that the Landlord is owed a balance of \$636.00 in unpaid rent.

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary order against the Tenant bringing the total amount owing to \$686.00.

I find that the Landlord currently hold \$345.00 as a security deposit plus \$12.21 interest on that deposit from January 05, 2005 to present date, which totals \$357.21. I order that the Landlord retain the \$357.21, security deposit plus interest, in partial satisfaction of the claim and I grant the Landlord a monetary order under section 67 for the balance due of **\$328.79**.

Conclusion

I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due in the amount of **\$328.79**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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 07, 2011.

Residential Tenancy Branch