

Decision

Dispute Codes: OPR / OPC, MNR, MNSD, FF

Introduction

This hearing was convened in response to the landlord's application for an order of possession / a monetary order as compensation for unpaid rent or utilities / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act, Regulation or tenancy agreement

Background and Evidence

There is no copy of a written tenancy agreement in evidence for this month-to-month tenancy which began on or about February 26, 2009. During the hearing, the tenant's legal counsel read aloud the nearest thing to a tenancy agreement; the document read was signed on behalf of the landlord by his daughter-in-law ("ST"). Monthly rent at the outset of tenancy was \$550.00, however, it is understood that effective in April or May of 2011, monthly rent became \$600.00. The tenant claims that a security deposit of \$500.00 was paid and, although the landlord disputed this during the hearing, the so-called tenancy agreement appears to reflect that this was paid at the start of tenancy. During the tenancy rent was paid variously by cheque or by cash. There is no evidence of receipts being issued for the payment of either a security deposit or rent. As for payment of rent, it appears to have been paid either to the landlord ("GST"), or his wife ("CT") or his daughter-in-law ("ST"). There is no copy of a move-in condition inspection report in evidence.

Arising from rent which the landlord claims was unpaid when due on September 1, 2011, the landlord issued a 10 day notice to end tenancy for unpaid rent dated September 9, 2011. The landlord submitted documentary evidence from a witness in support of his claim that the notice was personally served on the tenant on September 9, 2011. Thereafter, the landlord claims that the tenant made no payment of rent for September, October or November, before vacating the unit on November 9, 2011. On the other hand, while the tenant claims that rent was paid in cash for September and October, he does not dispute that no rent was paid for November 2011. The landlord states that cleaning and repairs are required in the unit and that, accordingly,

advertising for new tenants has not yet taken place. There is no copy of a move-out condition inspection report in evidence. As the tenant has vacated the unit, I consider the landlord's application for an order of possession to be withdrawn.

Analysis

The parties present varying accounts of whether or not rent was paid for the two months of September and October 2011. However, both parties agree that rent was not paid for November 2011, and that the tenants vacated the unit on November 9, 2011.

In the absence of receipts issued in exchange for payment of rent at any time during the tenancy, I find that the landlord has failed to prove on a balance of probabilities that rent was not paid for either September or October 2011. Accordingly, the landlord's application for a monetary order as compensation for unpaid rent with respect to these two months is hereby dismissed.

I also find on a balance of probabilities that a security deposit was collected at the start of tenancy in the amount of \$500.00. I make this finding in part on the basis of the tenancy agreement read aloud by the tenant's legal counsel during the hearing; I also make this finding on the basis of the landlord's specific application to retain the security deposit; further, I make this finding in the absence of any application from the landlord to end the tenancy on the basis that the security deposit was not paid as required.

In short, I find that the landlord has established a claim of \$650.00, which is comprised of \$600.00 in unpaid rent for November 2011, and the \$50.00 filing fee. I order that the landlord retain the security deposit of \$500.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$150.00 (\$650.00 - \$500.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$150.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and 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*.

DATE: November 22, 2011

Residential Tenancy Branch

