



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MND MNSD MNR MNDC O FF

Introduction

This hearing dealt with (a) an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim; and (b) an application by the tenant for a monetary order and orders that the landlord make repairs and comply with the Act. The landlord also requested recovery of the filing fee from the tenant. Both parties attended the hearing and had an opportunity to be heard.

Issues

Are the parties entitled to the requested orders?

Background and Evidence

This tenancy began on August 1, 2011. The rent was \$800.00 per month. However, the landlord claims that the rent went up to \$1,200.00 per month in October because the tenant was going to have access to three bedrooms as of that date as opposed to the original one bedroom that she rented in August. The landlord submitted a copy of a signed tenancy agreement and signed addendum in support of their position. In contradiction to this new rental amount however, the landlord submitted receipts for October and November which indicated that the rent was \$1,000.00 per month.

The landlord claims that on December 2, 2011 they served the tenant with a 10 Day Notice to End Tenancy for unpaid rent. This Notice indicated that the tenant had failed to pay \$1,000.00 in rent and that there was \$260.00 owing for utilities. The tenant says she did not dispute this Notice because she never got it. However, subsequently, on December 5, 2011 the tenant gave the landlord written notice that she would be vacating the rental unit effective December 31, 2011. The tenant did not vacate the rental unit on December 31st but rather remained in the rental unit.

Both parties agree that no rent has been paid for January.

The landlord claims that the rental unit has been damaged by the tenant.

The hearing of this matter was very difficult due to the communication styles of the parties. Both parties continually interrupted each other despite my repeated efforts to have each party testify in an organized manner. By the end of the hearing the whole thing had degenerated into a session of "You're a liar", "No, you're a liar."

Analysis

Despite the fact that this hearing was very difficult to manage, I am satisfied that I can make the following conclusions in response to the parties' applications based on the evidence before me.

Landlords' Claims

Order of Possession - I am satisfied that the landlord is entitled to an order of possession based on the tenant's Notice dated December 5, 2011. The tenant said she would vacate the rental unit on December 31, 2011 but failed to do so.

Monetary Order & Security Deposit – The landlord has made a total monetary claim in the amount of \$13,060.00. Most of this claim is comprised of damage the landlord believes the tenant has done to the rental unit. However, the landlord's claim for damage to the unit is premature in my view because the tenant is still residing in the unit and has not completed her cleaning and repairs prior to move-out. The balance of the claim is for unpaid rent and utilities for December and January. The Notice to End Tenancy indicated that the tenant owed \$260.00 in utilities as of December 2, 2011 and the landlord claims this amount is still outstanding. The landlord also claims that the tenant owes \$150.00 for utilities for January 2012.

I am satisfied based on the evidence before me that the landlord has established a claim for \$260.00 in unpaid utilities (this amount was clearly indicated on the handwritten receipts issued by the landlord in November and December) and \$800.00 in unpaid rent for January 2012. I am using the original amount of rent paid by the tenant because the parties are in disagreement over what the amount of the rent was supposed to be and in my view the documentary evidence is inconclusive. As for the utilities claim for January, I am not satisfied that the evidence before me supports this portion of the claim.

Tenant's Claim

Monetary Order – The tenant has made a total monetary claim in the amount of \$25,000.00. Details were not provided as to the basis for the tenant's claim and the tenant did not submit any documentary evidence in support of this claim. As a result, I am not satisfied that the tenant has established her claim.

Repairs & Compliance – As this tenancy is coming to an end it is not necessary for me to make any orders with respect to repairs or compliance.

Conclusion

I find that the landlord is entitled to an order for possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of \$1,060.00 comprised of \$800.00 in unpaid rent for January and \$260.00 in unpaid utilities. I therefore order that the landlord retain the deposit of \$600.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$460.00.

I dismiss the landlord's claim for damage to the rental unit on the basis that this claim is premature. The landlord is entitled to reapply for damage to the unit after the tenant has vacated.

I dismiss the tenant's application in its entirety.

I dismiss the landlord's request to recover the filing fee from the tenant.

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*.