



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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 an order to retain the security deposit in partial satisfaction of the claim.

Both parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

The Landlord testified that she no longer requires an order of possession as the Tenant moved out of the rental unit on February 18, 2012 and she has possession of the rental unit. As a result, the Landlord's request for an order of possession is dismissed.

The Landlord's Application requests rent for February and March 2012 from the Tenant. The Application was made on February 10, 2012 and the hearing was held on February 28, 2012. As a result, I find that it is premature for the Landlord to apply for rent or rental income loss for March 2012 from the Tenant. The Landlord's request for rent of rental income loss for March 2012 is dismissed with liberty 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 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 January 19, 2012, and rent is due on the first day of the month in the amount of \$1,450.00. The Tenant paid the Landlord a security deposit of \$725.00 at the start of the tenancy.

The Landlord testified that the Tenant provided an NSF cheque for rent for February 01, 2012. The Landlord stated that as a result they issued the Tenant a 10 Day Notice to

End Tenancy for Unpaid Rent on February 04, 2012. The Landlord stated that the Notice states that the Tenant was required to move out by February 14, 2012 or pay the full amount of the outstanding rent within five days of receiving the Notice.

The Landlord stated that the Tenant received the Notice and advised the Landlord that she was not able to pay the outstanding rent. The Landlord stated that the Tenant owes \$1,450.00 for February 2012 as stated on the Notice. The Landlord filed an Application for Dispute Resolution on February 10, 2012. The Landlord stated that while they were waiting for the hearing, the Tenant moved out of the rental unit on February 18, 2012. The Landlord stated that the Tenant returned all keys except for one. The Landlord stated that they are in the process of trying to find new tenants. The Landlord states that they have still not received any of the outstanding rent for February 2012.

The Tenant testified that she received the Notice to End Tenancy for unpaid rent on February 04, 2012 through personal service from the Landlord.. The Tenant stated that she did not move out of the rental unit until after receiving the Landlord's Application for Dispute Resolution. The Tenant stated that she vacated the rental unit on February 18, 2012 and left it clean and empty. The Tenant confirmed that she owes the Landlord \$1,450.00 in rent for February 2012. The Tenant stated that the Landlord may keep her security deposit of \$725.00 towards the outstanding rent.

The Landlord requests a monetary order for \$1,450.00 for outstanding rent and reimbursement of the \$50.00 filing fee for this proceeding. The Landlord also requests an order to keep the security deposit of \$725.00 towards the amounts owed.

Analysis

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

I accept the evidence of the parties that the Tenant has moved out of the rental unit on February 18, 2012 and the Landlord now has possession of the rental unit.

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 rent for February 2012 in the amount of \$1,450.00 and did not vacate the rental unit within 10 days of service of the Notice. The Tenant did not file an application to dispute the Notice to End Tenancy which she received on February 04, 2012.

I find that the Landlord has established a monetary claim of \$1,450.00 for 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 \$1,500.00

I order that the Landlord retain the security deposit (\$725.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$775.00**.

Conclusion

The Landlord's request for an order of possession is dismissed.

The Landlord's request for rent of rental income loss for March 2012 is dismissed with liberty to reapply.

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 **\$775.00**. 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: March 13, 2012.

Residential Tenancy Branch