



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 the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the outset of the hearing the parties agreed the tenant had moved out of the rental unit on or before August 29, 2012. As such, there is no need for an order of possession and I amend the landlord's Application to exclude the matter of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on October 3, 2011 for a month to month tenancy beginning on October 15, 2011 for the monthly rent of \$650.00 due on the 1st of each month and lists a security deposit of \$325.00 is required.

The landlord testified the tenant had paid only \$150.00 as a security deposit and that due to rent underpayments on the part of the tenant all of the security deposit was used up to cover them during the tenancy. The tenant testified that the Ministry of Social Development had paid his security deposit to the landlord in the amount of \$325.00. Neither party provided documentary evidence regarding the security deposit.

The landlord seeks compensation for unpaid rent for the month of August 2012 and seeks lost rent for the month of September because they did not advertise the rental unit's availability since the tenant had not moved out.

The landlord submits the tenant had failed to pay rent for August 2012 and the landlord issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent on August 8, 2012

with an effective date of August 15, 2012. The parties agree the tenant vacated the rental unit on or before August 29, 2012. The tenant agrees he owes the landlord rent for August 2012.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I accept the tenant owes the landlord rent for the month of August 2012. As to the landlord's claim for rent for September, I find that the tenancy ended as a result of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent and although the tenant did not vacate on the effective date of the Notice he did vacate prior to the end of August 2012.

As a result, the tenancy did not extend into September and the landlord was at liberty to rent the unit to a new tenant. From the landlord's testimony he did not advertise or show the rental unit to potential tenants and as such, I find the landlord took no steps at all to mitigate any lost revenue for the month of September 2012.

Section 7 of the *Act* allows requires a tenant who fails to comply with the *Act*, regulation or tenancy agreement to compensate the landlord. However, a landlord who makes a claim for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

As the landlord failed to take any steps to mitigate his loss I find the landlord has failed to meet his obligations under Section 7 to do whatever is reasonable to minimize the damage or loss and is therefore not entitled to claim rent for September 2012.

As to the security deposit, as neither party provided documentary evidence about the deposit, I note the burden falls to the landlord to provide sufficient evidence of the security deposit paid and how it was dispersed.

While the tenant provided no testimony to dispute that he had been short rent on a few occasions during the tenancy for which the landlord applied the security deposit to make up the difference, I find from the landlord's testimony that this accounts for \$150.00.

However, as the tenant does dispute the amount paid for the deposit (he submits he paid \$325.00), the burden is on the landlord to provide evidence to support his position that the tenant only paid \$150.00. As the landlord has provided no evidence in the form

of receipts or a tenant ledger confirming the amount paid and in conjunction with the notation in the tenancy agreement that the deposit was \$325.00, I find the landlord still holds \$175.00 of the security deposit.

Conclusion

For the reasons above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$700.00** comprised of \$650.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$175.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$525.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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*.

Dated: September 25, 2012.

Residential Tenancy Branch