



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MT CNR
For the landlord: OPR MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenant applied for more time to make an application to cancel a notice to end tenancy and to cancel a notice to end tenancy for unpaid rent or utilities.

The landlord applied for an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities, to keep all or part of a pet damage deposit and/or security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The parties gave affirmed testimony, were provided the opportunity to present their applicable evidence orally, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The tenant stated at the start of the hearing that she vacated the rental unit on August 27, 2012 after having moved into a new residence on August 23, 2012. As a result, the tenant’s application was dismissed as the tenancy subject to this dispute, has ended.

Given the above, the portion of the landlord’s application regarding possession is also dismissed as the landlord has possession of the rental unit. The hearing continued with the landlord’s monetary claim.

Issues to be Decided

- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Should the landlord be authorized to keep all or part of a pet damage deposit and/or security deposit?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord recover the filing fee?

Background and Evidence

The parties agreed that a month to month tenancy agreement began on July 31, 2009. Monthly rent in the amount of \$1,340.00 included utilities and was due on the first day of each month. The tenant paid a pet damage deposit of \$625.00 and a security deposit of \$625.00 at the start of the tenancy.

On July 31, 2012, the tenant served one month written notice to the landlord that she would be vacating the rental unit by August 31, 2012. The landlord confirmed receiving the notice from the tenant on July 31, 2012.

The landlord's monetary claim is for \$2,680.00 consisting of unpaid rent for August 2012 in the amount of \$1,340.00, and loss of rent for September 2012 in the amount of \$1,340.00.

The landlord was asked what attempts he made to find another tenant after being given notice on July 31, 2012. The landlord stated that he could not show the rental unit due to 10 dogs being in the rental unit. The tenant responded by stating that her 2 dogs had 8 puppies and that some of the puppies were sold starting on August 6, 2012 with the last puppy being sold on August 13, 2012. The landlord denied making any attempts to advertise the rental unit and confirmed that rental unit remains vacant. The landlord stated during the hearing that he will be renting the unit soon, but claimed there was damage to the rental unit.

The landlord has not claimed for damages and did not submit documentary evidence of damage prior to the hearing. The tenant disputed the landlord's testimony by asking where the damage was. The landlord did not provide evidence during the hearing regarding damage other than to state that he took photos of the damage, however, did not submit the photos as evidence.

Both parties agree that the tenant agreed in writing for the landlord to retain her security deposit towards the unpaid rent for August, 2012.

Analysis

Based on the oral testimony and documentary evidence before me, and on the balance of probabilities, I find the following.

Claim for unpaid rent for August 2012 – Both parties agree that the tenant agreed in writing for the landlord to retain her security deposit for unpaid rent for August 2012. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The landlord has not received rent for August 2012. **I find** the landlord has met the burden of proof and I award the landlord a monetary claim of **\$1,340.00** consisting of rent owing for August 2012.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Claim for loss of rent for September 2012 – The landlord has claimed \$1,340.00 for the loss of rent for September 2012. The tenant provided written notice on July 31, 2012 received on the same day by the landlord, indicating the tenant would be ending the month to month tenancy by August 31, 2012. The landlord testified during the hearing that he did not advertise the rental unit due to 10 dogs being in the rental unit and due to damage, however, did not provide evidence of damage during the hearing.

I find the landlord has failed to prove that the tenant violated the *Act*, regulation or tenancy agreement leading to loss of rent for September 2012. Furthermore, **I find** the landlord failed to do whatever was reasonable to minimize the damage or loss. At the very least, I would expect the landlord to show the unit as soon as possible and submit documentary evidence such as photos prior to the hearing to substantiate his claim. In addition, I would expect that the landlord would have advertised the rental unit for rent, which by his own testimony; he affirmed he did not do. As a result, **I dismiss** the landlord's claim for loss of rent for September 2012 in the amount of \$1,340.00 due to insufficient evidence, without leave to reapply.

As the landlord was partially successful in his application, I grant the landlord a portion of the filing fee in the amount of **\$25.00**.

The landlord continues to hold the tenants \$625.00 security deposit and \$625.00 pet damage deposit for a total of \$1,250.00, which has accrued no interest to date.

Conclusion

The tenant's application is dismissed.

The landlord's order of possession portion of his application is dismissed.

The landlord's claim for loss of rent for September 2012 in the amount of \$1,340.00 is dismissed without leave to reapply, due to insufficient evidence.

I find that the landlord has established a total monetary claim of **\$1,365.00** comprised of \$1,340.00 in August 2012 rent owed and \$25.00 of the filing fee. I order that the landlord retain the security deposit and pet damage deposit of \$1,250.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the

balance due of **\$115.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 07, 2012

Residential Tenancy Branch