



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNR, MNDC, PSF, RR, OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an Application by the tenant seeking an order to cancel a Ten Day Notice to End Tenancy for Unpaid Rent, monetary compensation, a rent reduction and an order to force the landlord to comply with the Act.

The hearing was also convened to deal with the landlord's application for an Order of Possession and a monetary order for rental arrears based on a Ten Day Notice to End Tenancy for Unpaid Rent dated August 6, 2012. The landlord was also seeking compensation for pay T.V. charges and damages for loss of rent for September.

The landlord appeared. Despite being served in person, and filing their own application, the tenant failed to appear. Therefore, the tenant's application must be dismissed.

At the outset of the hearing, the landlord advised that the tenant vacated on September 2, 2012. I find that the landlord's request for an Order of Possession is now moot.

Issue(s) to be Decided

Is the landlord entitled to compensation for rental arrears, loss of rent and damages?

Background and Evidence

The landlord provided a copy of the Ten Day Notice to End Tenancy for Unpaid Rent, copies of the cheques, a copy of the tenancy agreement and copies of communications

The landlord testified that the tenancy began on February 15, 2012 with rent at \$950.00. The tenancy agreement shows that a security deposit of \$475.00 and pet damage deposit of \$200.00 had been paid. According to the landlord, the tenant was already credited with the security deposit in May 2012 when they had problems paying the rent. The landlord did not submit any evidence to verify this claim.

The landlord testified that the tenant failed to pay rent for August 2012 and was issued a Notice to End Tenancy which was served in person on August 6, 2012.

The landlord testified that the tenant vowed to remain in the unit until the hearing date of September 12, 2012. The landlord testified that, because of this, the landlord could not show the unit to prospective tenants to re-rent it for September. The landlord testified that, after the tenant left on September 2, 2012, the rental unit required significant repairs and therefore the landlord was further delayed in re-renting the unit. The landlord feels entitled to be compensated for loss of rent for September 2012.

With respect to the claim for compensation for the pay T.V. movie charges, the landlord testified that, although cable services are included in the rent, the tenants were made aware that they must reimburse the landlord for any pay T.V. charges for movies and failed to do so. The landlord is claiming compensation for the costs of the movies.

The landlord's claim included \$950.00 rent for August, \$950.00 loss of rent for September 2012 and reimbursement for pay movies ordered by the tenant from the cable service offered as part of the tenancy.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent and has not paid the outstanding rent. Given the above, I find that the landlord is entitled to the \$950.00 rent owed for August 2012.

With respect to claims of damages for loss of rent and other charges, an Applicant's right to claim damages from another party is dealt with under section 7 of the Act. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

The party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a

contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

With respect to the loss of rent for September, I accept the landlord's testimony that the tenant vacated on September 2, 2012 and that the unit could not possibly be re-rented for September 1, 2012. I find that the landlord has offered sufficient proof of loss of rent for a portion of September and I find that the landlord is entitled to half of the rent in the amount of \$475.00. The landlord is at liberty to seek additional compensation if the unit remains vacant beyond September 15, 2012.

With respect to the landlord's claim to be reimbursed for the cost of the pay T.V. charges, I find that the landlord did not submit cable invoices or any records of the claimed costs, nor did the landlord offer sufficient proof to verify that the tenant had ordered the movies. Moreover, I find that the tenancy agreement included cable, but was silent on the subject of what the obligations were in regard to pay T.V. orders. For this reason, I find that the claim does not meet any elements of the test for damages.

I find that the landlord is entitled to total compensation of \$1,475.00, comprised of \$950.00 rent for August, \$475.00 rent for September and \$50.00 cost of the application.

In regard to the tenant's security deposit, I find that, under the Act a tenant cannot allocate the deposit as payment for rent without the landlord's written agreement. However, no documentary evidence, such as a tenant ledger, was submitted by the landlord to verify that the tenant's security deposit was already credited to the tenant. I find that the landlord is still holding \$675.00 in trust for the tenant and I order that the landlord retain the security deposit of \$475.00 and pet damage deposit of \$200.00 in partial satisfaction of the claim, leaving a balance due of \$800.00.

Conclusion

I hereby grant the Landlord a monetary order under section 67 for \$800.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) 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*.

Dated: September 12, 2012.

Residential Tenancy Branch