



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; and to recover the filing fee from the tenant for the cost of the application.

The landlord and tenant both attended the conference call hearing, however the tenant did not remain in attendance throughout the hearing, having voluntarily disconnected from the call. The landlord gave affirmed testimony and provided evidentiary material in advance of the hearing, but the tenant abruptly and rudely disconnected from the conference call during cross examination of the landlord and without giving any testimony.

No issues with respect to service of documents or evidence were raised during the hearing, and all testimony and evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord advised that the tenant has vacated the rental unit and the application for an Order of Possession is withdrawn.

Issue(s) to be Decided

Has the landlord established a claim as against the tenant for unpaid rent or utilities?
Has the landlord established a claim as against the tenant for damage to the unit, site or property?

Background and Evidence

The landlord testified that a previous tenant had entered into a fixed term tenancy in February, 2012 for a tenancy to begin on February 20, 2012 and to expire on August 20, 2012. The landlord at that time had a property manager, who attended the rental

unit on May 20, 2012 to collect rent. The tenant was not there, but the tenant named in this application advised that she had moved in with the tenant. Two or three weeks later the landlord discovered that the tenant who signed the tenancy agreement had moved out. This tenant advised that she had taken over the tenancy and negotiated a lower amount of rent with the landlord. The original rent had been \$750.00 per month, but the parties agreed to reduce the monthly rent to \$700.00, payable on the 20th day of each month but no written tenancy agreement was prepared or signed by the parties. The tenant paid rent for the month of June, 2012 in the amount of \$700.00, but paid no rent after that. The landlord does not know when the tenant vacated the rental unit, but the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 6, 2012 by posting it to the door of the rental unit on that date. A copy of the notice was not provided for this hearing, but the landlord testified that it stated that the tenant failed to pay rent in the amount of \$2,100.00 that was due on July 20, 2012 and stated that that amount was actually due on September 20, 2012 and the notice contained an expected date of vacancy of September 19, 2012.

The landlord further testified that no security deposit or pet damage deposit was paid to the landlord, and no move-in or move-out condition inspection reports were completed. The landlord resided in the U.S. and a property manager was trusted to deal with the tenancy.

During the tenancy, another tenant in the building reported to the landlord that the sewer had backed up. The landlord called a plumber who found water running from the rental unit to the other tenant's suite through the bottom of the door that separates the 2 suites. The restoration company was refused entry to complete restoration services by the tenant. The tenant had a large pool in the yard and ran a hose continuously into it which spilled over and ran throughout the property causing extensive damage to the building which ultimately has caused a severe accumulation of mould. The landlord does not yet know the extent of the damages, however the landlord paid \$450.00 to have debris from the yard removed after the tenant moved out. No receipt for the yard clean-up has been provided.

The landlord further testified that another leak was coming from a unit above into the tenant's rental unit, but the tenant didn't advise the landlord and further damage to the ceiling in the rental unit has also been caused as a result.

The landlord also provided a copy of a letter written to the landlord by the City indicating that the landlord had an illegal suite on the property and had to remove that suite. The letter is dated August 15, 2012 and states that a follow-up inspection would be conducted on October 2, 2012 to determine whether or not the illegal suite was removed, and if not, further legal action would be taken.

The landlord found out recently, about 15 days ago, that the tenant moved out and squatters were going in and out of the rental unit. During cross examination, the landlord testified that other tenants in the building did not move out after 2 weeks, but paid rent for 2 months. The tenant then disconnected from the conference call hearing stating that the tenant had “no time for this shit.”

Analysis

In the circumstances, I find that the tenant is a tenant as described by the *Residential Tenancy Act* by virtue of the tenant paying rent to the landlord. I accept the undisputed testimony of the landlord that the tenant failed to pay rent for the months of July, August, and September, 2012 after paying rent for the month of June in the amount of \$700.00. I find that the landlord has established a claim for unpaid rent in the amount of \$2,100.00. With respect to the landlord's claim for a monetary order for rent for the month of October, 2012, I find that the landlord has failed to prove that the landlord did whatever was reasonable to re-rent the rental unit. The landlord testified that extensive damage has been caused, but provided no evidence of that. The landlord provided a copy of a letter from the City stating that one of the rental units must be removed because it is an illegal suite and states that a follow-up inspection would be conducted on October 2, 2012. The landlord did not make it clear which rental unit was affected by the City's letter, and the onus is on the landlord to prove the claim. I am not satisfied that the tenant could have remained in the rental unit for the month of October, 2012 and therefore, the landlord is not entitled to claim that month of rent.

With respect to the landlord's application for a monetary order for damage to the unit, site or property, I find that the landlord has made the application prematurely because the tenant was still resident in the rental unit at the time the application was made and the landlord does not yet know the extent of such damages. I therefore dismiss that portion of the landlord's application with leave to reapply.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed without leave to reapply, as withdrawn by the landlord.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed with leave to reapply.

I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Branch* in the amount of \$2,150.00 for unpaid rent and recovery of the filing fee.

This order is final and binding on the parties and may be enforced.

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: October 24, 2012.

Residential Tenancy Branch