



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested a monetary Order for unpaid rent from January 2011 to February, 2012, inclusive in the sum of \$9,750.00 and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Preliminary Matters

The landlord entered the conference call hearing after the scheduled start time of 10:30 a.m. The application was reviewed and the landlord and his agent were affirmed.

The tenant then entered the conference call hearing. The tenant was at work and I could not clearly hear the tenant speak. The tenant exited the hearing and at 10:41 a.m. the tenant's agent entered the conference call hearing. At this point I established service of Notice of the hearing. The application was reviewed and the tenant's agent was affirmed.

The tenant's agent testified that the landlord's evidence was not received. The landlord stated he had previously served the tenant with copies of the 10 Day Notices to End Tenancy that was included in the evidence. The landlord had applied for dispute resolution on July 17, 2012 and submitted the evidence to the Residential Tenancy Branch on September 24, 2012.

There was no evidence before me that the evidence was served to the tenant; therefore, based on the absence of proof of service and the landlord's testimony that the Notices were previously given to the tenant I determined that the evidence would be set aside; the landlord was at liberty to provide affirmed oral testimony.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent in the sum of \$9,750.00?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord stated that the tenant signed a tenancy agreement on January 1, 2011. Rent was \$750.00 due on the last day of each month. The tenant vacated the unit on February 15, 2012.

The tenant's agent said that the tenant moved into the basement unit in September, 2010 and that he did not sign a tenancy agreement in 2011. The agent stated that the tenant vacated the unit on March 15, 2012, not in February.

The landlord has claimed compensation for unpaid rent from January 2011 to February, 2012, inclusive in the sum of \$750.00 per month, totaling \$9,750.00.

The landlord said that the tenant had been allowed to live in the basement unit and that as a result of his wife's illness and other issues, he was provided with work and that rent was to be deducted from pay owed. The landlord indicated that Notices to end tenancy for unpaid rent had been issued to the tenant in early 2011; the tenant said that no notices had ever been served.

After the tenant vacated the unit he sued the landlord, who has now been ordered by the employment standards ministry to pay the tenant back-wages that are due. In response to that order the landlord submitted an application to recover rent that was payable commencing January 2011.

The tenant stated that rent had been paid to either the landlord's son or daughter-in-law, via cash payments. No receipts were issued to the tenant.

The tenant's wife was employed and has worked for thirteen years; she is not disabled and continues to earn income.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The landlord has submitted that the tenant had been provided with an employment/rental opportunity in which the tenant's pay would be reduced by the amount of rent owed. The tenant has disputed the landlord's submission.

The landlord provided no evidence in support of the claim that an employment arrangement had been created that would allow rent to be deducted from pay due to the tenant. While there may have been some sort of verbal agreement between the parties,

if the tenant had signed a tenancy agreement in January 2011, there was no evidence before me that such an agreement included deductions from pay owed, to satisfy rent due.

I found the tenant's submission equally compelling; that rent was paid in cash and that receipts were not issued. If the landlord had in fact issued Notices to end tenancy for unpaid rent, I find that would have been inconsistent with the landlord's submission that rent was to be deducted from pay owed to the tenant. Either the tenant worked and rent was to be deducted, or it was not. If rent had not in fact been paid, the landlord could have enforced a Notice to end tenancy that he says was issued, which could then have resulted in an Order of possession. This did not occur.

I find that 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 version of events. Therefore, in the absence of any evidence supporting their claim for unpaid rent, I find that the landlord's application is dismissed.

Further, the landlord confirmed that he was able to participate in the employment standards claim process initiated by the tenant, yet no evidence of submissions made by the landlord were supplied as evidence. The landlord provided no testimony that the issue of rent owed was raised in response to the tenant's claim made for unpaid wages, which I find forms further doubt in relation to the claim made by the landlord.

During the hearing I urged the landlord to ensure that tenancy agreements which include rent deductions from employment be made in writing, in compliance with the Act.

Conclusion

The application is dismissed.

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: October 02, 2012.

Residential Tenancy Branch