Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, MNDC, OLC, RP, FF

For the landlord – OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for dispute resolution. The tenant applied to cancel a Notice to End Tenancy; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; for an Order for the landlord to comply with the *Act,* regulation or tenancy agreement; For an Order for the landlord to make repairs to the unit, site or property; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The hearing went ahead as scheduled however the tenant failed to dial into the conference call during the call. Therefore, no hearing took place regarding the tenant's application as the tenant has failed to present the merits of their application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, and was served in person to the tenant on October 13, 2012. The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Issue(s) to be Decided

- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This fixed term tenancy started on December 01, 2011 for one year. Rent for this unit is $2,600.00 per month and is due on the 1st of each month. The tenant paid a security deposit of $1,300.00 on November 07, 2011.

The landlord testifies that the tenant failed to pay rent for October, 2012. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on October 03, 2012. This was handed to the tenant in person. This Notice informed the tenant that he owes rent for October, 2012 of $2,600.00. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on October 03, 2012. The tenant did not pay the outstanding rent and although the tenant has disputed the Notice within five days the tenant has not appeared at the hearing today to present the merits of his application. Since that time the tenant has not paid rent for November, 2012 on the day it was due to the amount of $2,600.00. The total amount of unpaid rent is now $5,200.00. The landlord has limited his claim to $5,000.00 on his application.

The landlord testifies that he does not know when the tenant moved from the rental unit but it would have been sometime between October 13, 2012 when notice of this hearing was served to the tenant and November 06, 2012 when the landlord checked the rental unit.

The landlord has applied to retain the tenant's security deposit in partial payment towards the rent arrears.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, I find that the tenant has failed to pay rent for October, 2012 and the landlord is entitled to recover rent arrears to the sum of $2,600.00. With regard to the landlords claim for unpaid rent for November, 2012; I find that this was a fixed term tenancy which was not due to expire until November 31, 2012. Consequently, as the tenant failed to pay rent for November, 2012 the landlord is entitled to recover that rent to place himself in the same position as if the tenant had not breeched the tenancy agreement. In normal circumstances a landlord would have to show what steps he took to mitigate his loss for the rent by showing how he had tried to re-rent the unit. As the landlord only found out on November 06, 2012 that the tenant had vacated the rental unit, the landlord is not able to show how he will re-rent the unit for the reminder of November, 2012. Consequently I find the landlord has established a claim to recover unpaid rent for November to the sum of $2,600.00. The landlord has limited his claim to $5,000.00.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **$1,300.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act.*

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	$5,000.00
Less Security Deposit	(-$1,300.00)
Plus filing fee	$50.00
Total amount due to the landlords	**$3,750.00**

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **$3,750.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The tenant's application is dismissed without leave to reapply.

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: November 07, 2012.

Residential Tenancy Branch