



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, CNR, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed and loss of revenue, pursuant to Section 67;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46;

Despite being served by registered mail sent on October 12, 2012, the tenant did not appear.

At the outset of the hearing, the landlord advised that the tenant had vacated the rental unit at the end of October 2012. As the tenant did not appear for her application and because the tenant vacated the rental unit, I find the issue of an Order of Possession to be moot.

The landlord stated that they still wished to proceed with respect to the landlord's monetary claims for rental arrears for October 2012 and loss of revenue for the month of November, 2012, during which the unit was vacant.

Issue to be decided

- Is the landlord entitled to compensation for unpaid rent and compensation for loss of revenue?

Background and Evidence

The tenancy started in June 2012 with rent set at \$620.00 per month payable on the 1st day of each month and a security deposit of \$310.00 was paid by the tenant. The landlord testified that the tenant failed to pay rent for October and a Ten Day Notice to

End Tenancy for Unpaid Rent was issued and served on the tenant by posting it on the door on October 2, 2012. In evidence was a copy of the Ten Day Notice to End Tenancy for Unpaid Rent and a copy of the tenancy agreement.

The landlord testified that the tenant did not pay the rental arrears of \$620.00 for October, which is being claimed. The landlord testified that the tenant then vacated the rental unit on October 28, 2012 leaving no forwarding address. The landlord testified that no attempt was initiated by the landlord to advertise the unit seeking a tenant for the month of November 2012, because the unit needed renovations. The landlord testified that a loss of \$620.00 revenue for November 2012 was incurred because the unit was left vacant and compensation for the loss is also being claimed.

Analysis:

In regard to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due under the tenancy agreement. If the tenant does not pay rent when it is due, the landlord can issue a Notice to End Tenancy for Unpaid Rent under section 46 of the Act. I find that the Notice was properly issued and served and that the tenant moved out still owing rent of \$620.00 for October 2012, for which the landlord is entitled to compensation.

In regard to the landlord's claim for compensation for loss of revenue for the month of November 2012, I find that this would not be considered rental arrears, but is considered a claim in damages, because it was for a period during which the tenant was no longer in possession of the rental unit. I find that this loss did not exist at the time that the landlord's application was made on October 11, 2012.

In a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test for damages by establishing the existence and value of the damage or loss, showing that it stemmed directly from a violation of the Act or agreement and that a reasonable attempt was made to mitigate the damage or losses incurred under section 7(2) of the Act.

With respect to a loss of revenue or other damages, I order that the landlord's request for unpaid rent for November 2012 is dismissed. I do so with leave to reapply and the landlord is at liberty to make an application for dispute resolution seeking the loss and any other damages under the Act.

I find that the landlord is entitled to total compensation of \$670.00, comprised of \$610.00 for rental arrears for October 2012 and the \$50.00 cost of the application. I

order that the landlord retain the tenant's \$310.00 security deposit in partial satisfaction of the claim, leaving \$360.00 still outstanding in favour of the landlord.

I hereby issue a monetary order in favour of the landlord for \$360.00. This Order must be served on the tenant in person or by registered mail. This decision and order is final and binding and may be enforced through Small Claims Court if necessary.

The portion of the landlord's application seeking damages for loss of revenue for the month of November 2012 is dismissed with leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety without leave.

The landlord is granted a monetary order of \$360.00 for rental arrears. The portion of the landlord's application relating to a claim for lost revenue for November 2012 was dismissed with 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