



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.

The tenant applied for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46;
- An order to force the landlord to do emergency repairs.

Both parties appeared and gave testimony.

At the outset of the hearing, the parties advised that the tenant vacated the rental unit on or before November 6, 2012. As the tenant was no longer in the rental unit, I find the issue of an Order of Possession is moot and the tenant's application, including the request for emergency repairs, is resolved as the tenant had already moved out.

The landlord testified that he still wished to proceed with respect to the landlord's monetary claims for rental arrears.

Issue to be decided

Is the landlord entitled to a monetary order for rental arrears?

Background and Evidence

The tenancy started on July 15, 2012 with rent set at \$1,275.00 per month payable on the 15th day of each month and a security deposit of \$637.50 and pet damage deposit of \$637.50 were paid.

The landlord testified that the tenant failed to pay rent due on October 15, 2012 and a Ten Day Notice to End Tenancy for Unpaid Rent was issued and served on the tenant.

In evidence was a copy of the Ten Day Notice to End Tenancy for Unpaid Rent dated October 16, 2012 and a copy of the tenancy agreement.

The landlord testified that the tenant did not pay the rental arrears owed, of \$1,275.00 and the landlord is claiming compensation for one month of rental arrears. In addition to the monetary claim above, although the landlord made the application for dispute resolution on October 19, 2012, the landlord's application also included a damage claim in advance seeking \$1,275.00 anticipated loss of revenue for the period from November 15, 2012 to December 14, 2012. The landlord also testified that the tenant left the unit in an unclean and damaged condition when he vacated.

The tenant testified that the unit was not in good clean condition when he moved in and that the unit was fraught with deficiencies that the landlord refused to rectify during the tenancy.

The tenant admitted that he had failed to pay rent due on October 15, 2012, and received a Ten Day Notice to End Tenancy for Unpaid Rent on October 16, 2012. The tenant testified that he had decided to vacate the unit and advised the landlord to keep his security and pet damage deposits totaling \$1,275.00 in lieu of the \$1,275.00 rent due on October 15, 2012 for the period from October 15 to November 14, 2012.

According to the tenant, he vacated the unit by November 1, 2012, but was not able to locate the landlord to return the keys until November 6, 2012. The tenant pointed out that his debt with the landlord has been satisfied in full by his security and pet damage deposits and no arrears are currently outstanding.

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, whether or not the landlord complies with the Act, the regulations or 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 did owe rental arrears of \$1,265.00 on October 16, 2012, when the Notice was issued.

Therefore I find that the landlord is entitled to \$1,265.00 compensation and is entitled to retain the tenant's security and pet damage deposits of \$1,265.00 in full satisfaction of the claim.

In regard to the landlord's additional claims for compensation for loss of revenue for the month from November 15, 2012 to December 14, 2012, I find that this is not considered

as being rental arrears, but is a claim in damages, because this was not rent owed at the time that the landlord's application was made on October 19, 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/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 under section 7(2) of the Act.

I find that, with respect to the loss of revenue beyond the ending of the tenancy or any other damages, the landlord is at liberty to pursue a claim through dispute resolution seeking compensation under the Act. Accordingly, I order that this portion of the landlord's application is premature and must be dismissed.

I find that the landlord is entitled to total compensation of \$1,275.00 for rental arrears for October 15, 2012 to November 14, 2012 and I order that the landlord retain the tenant's \$1,275.00 security and pet damage deposit in satisfaction of the claim.

I hereby dismiss the tenant's application in its entirety without leave.

The portion of the landlord's application seeking compensation for loss of revenue and other damages is hereby dismissed with leave to reapply.

Each party is responsible for their own costs of the applications.

Conclusion

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

The landlord is granted monetary compensation for rental arrears of \$1,275.00 satisfied in full by retaining the tenant's security deposit and pet damage deposits, and the portion of the landlord's application relating to loss of revenue or other damages is 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 26, 2012.

Residential Tenancy Branch