



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Background and Evidence

The tenancy began on or about July 1, 2011. Rent in the amount of \$1450.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$700.00.

The landlord gave the following testimony; the tenant has not paid the rent for October 2012 or November 2012, has not been notified that the tenant vacated the unit and was first advised of it during today's hearing, is worried about the condition of the unit, has yet to receive the tenant's keys for the suite or forwarding address, feels the tenant prevented him from renting the unit.

The tenant gave the following testimony; was in discussion at possibly purchasing the unit from the landlord when talks broke off as they could not come to terms and at that time their relationship deteriorated, she feels that she has been subject to manipulation and unfair treatment, advised that she has moved out of the unit near the end of October and will drop off the keys in the next day or two, acknowledges that she did not pay rent for the month of October and November, feels strongly that she should not have to pay for the month of November because of the landlords abuse and how her family was unfairly treated.

Analysis

Both parties participated in the teleconference hearing however the landlord was the sole applicant. The tenant's wished to have their issues of harassment, bullying and poor condition of the unit dealt with as part of this hearing. The landlord wished to have "possible damage to the suite" dealt with as part of this hearing. The tenant's did not submit any documentary evidence for those issues nor did they apply for dispute resolution. The landlord is premature in his wanting to seek compensation as he has yet to see the unit since the tenant moved out. A large portion of the hearing was spent explaining the rules of procedure, the submitting of evidence and the process to file an application for dispute resolution. It was made clear that today's decision would only reflect the items that the landlord applied for and that both parties were at liberty at filing their own application for any unresolved issues if they so chose. They indicated that they understood and the hearing proceeded.

The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the parties were in a highly charged screaming match with each making allegations of "liar" to each other. The parties were more intent on arguing with each other than answering questions or providing testimony. The landlord provided some documentary evidence for this hearing, the tenant did not.

The parties initially entered into a fixed term agreement that was to end on June 30, 2012. The parties verbally agreed to extend the tenancy to allow discussions for a possible sale between the parties. Both parties gave testimony that their "belief" was that the tenancy was to end on October 31, 2012; however that fact was neither confirmed nor relayed to each other. Although there are some ambiguities from what the parties testified to and the documentation, I accept that both parties were of the mindset that the tenancy was to end on October 31, 2012. The parties both testified that they last had contact with each other in mid September 2012 which resulted in a screaming match; both parties decided to wait until today's hearing to communicate. The landlord has not been in a position to carry out his duties of a landlord and to mitigate his loss as he was unaware if the unit was empty and for the fact he had not received the keys back. The landlord was fearful to make any contact or inquiries until after this hearing. The returning of keys and final walk through inspection is a vital part of the process in a tenancy. The landlord was prohibited from conducting his business as he was unable to advertise or make arrangements to mitigate losses as he was unable to access the suite. Based on the documentary evidence and testimony provided and the tenant's own acknowledgement of the unpaid rent I find that the landlord has proven their claim.

As for the monetary order, I find that the landlord has established a claim for \$2900.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee for a total monetary order of \$2950.00. I order that the landlord retain the \$700.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2250.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

As stated earlier in this decision, the tenant has already vacated the unit and therefore an order of possession is no longer required; accordingly I dismiss that portion of the landlords claim.

Conclusion

The landlord is granted a monetary order for \$2250.00. The landlord may retain the security deposit.

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 05, 2012.

Residential Tenancy Branch