



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, 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.

At the hearing, the parties confirmed that the tenant had vacated the rental unit. As an order of possession is no longer required, I consider that claim to have been withdrawn.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that pursuant to a legal rent increase effective on August 1, 2008, the rent at the end of the tenancy was \$1001.28. The tenant claimed that she asked the landlord if she could pay just \$1,000.00 per month and the landlord agreed. The landlord claimed that the tenant paid \$1,000.00 per month by way of cheque or money order and would also give the landlord the remaining \$1.28 in change.

The parties further agreed that the tenant gave the landlord a cheque for November's rent, but that she placed a stop payment on the cheque.

The landlord testified that on November 7 she received from the tenant written notice that the tenant would be vacating the rental unit effective November 30. The tenant testified that on October 29 she asked the landlord's agent if the landlord intended to perform repairs and upon hearing that the landlord did not intend to complete repairs, she told the agent that she would be vacating the rental unit. She claimed that the agent told her that he would not accept her notice. The tenant acknowledged that she did not attempt to put her notice in writing on October 29.

The landlord seeks to recover unpaid rent for the month of November and loss of income for the month of December. The landlord testified that she has an ongoing advertisement on Craigslist which she renews daily, but that little interest has been shown in the unit.

The landlord's agent testified that the tenant did not finish moving out of the unit until the first or second of December, which the agent recalled because he was in the office on those days to make himself available to collect rent. The tenant claimed that she moved out of the unit on November 16 and that she placed her keys in an envelope and put them through the office door on November 29th. The landlords and their agent testified that at the end of the month, they daily check for rent having been dropped through the mail slot in the office door and stated that they did not discover the keys until the evening of December 2.

When asked why she did not return the keys if she had completely vacated the unit on November 16, the tenant replied that the landlord's agent had told her not to worry about it.

Analysis

As the tenant did not pay rent for the month of November, I find that the landlord is entitled to recover November's rent. I find that the tenant was obligated to pay \$1001.28 and I award the landlord that sum.

The tenant was obligated under the Act to give written notice that she was ending her tenancy at least one calendar month in advance of the end of the tenancy. Section 53 of the Act automatically changes incorrect effective dates and as the tenant acknowledged that she did not give written notice in October, I find that her notice could not have been effective until December 31.

I further find it unlikely that the tenant would have completely vacated the unit on November 16 but returned at the end of the month solely to return the keys. I find it more likely that the tenant had not completed her move until the end of the month and I find it more likely than not that she did not return keys until December 2.

Because the tenant's notice did not take effect until December 31 and because the tenant overheld the rental unit for 2 days, I find that the landlord is entitled to recover loss of income for the month of December and I award the landlord \$1001.28.

As the landlord has been wholly successful in this claim, I find that they should recover the \$50.00 filing fee paid to bring the application and I award them \$50.00.

Conclusion

The landlord is awarded \$2,052.56 which represents \$1,001.28 for November's rent, \$1,001.28 for loss of income for December and the \$50.00 filing fee. I grant the landlord a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: December 19, 2012

Residential Tenancy Branch