



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD

Introduction

There are applications filed by both parties. The Landlord has made an application for an order of possession and a monetary order for unpaid rent or utilities. The Tenant has made an application for a monetary order for money owed or compensation for damage or loss, for the return of the security deposit and to control the Landlord's right to enter the rental unit.

Both parties attended the hearing by conference call and gave testimony. AS both parties have attended and have confirmed receipt of the submitted evidence, I am satisfied that both parties have been properly served.

It was clarified with both parties at the beginning of the hearing that as the Tenant has vacated the rental unit on December 5, 2012, the Landlord is no longer seeking an order of possession (OPR). As a result no further action is required for this portion of the claim. It was also clarified that as the Tenant has vacated the rental unit that no further action is required for the Tenant's request to control the Landlord's right to enter the rental unit (LRE).

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

This Tenancy began on July 1, 2012 on a month to month basis as shown by the Landlord's submitted copy of the signed tenancy agreement. The monthly rent was \$700.00 payable on the 1st of each month and a security deposit of \$350.00 was paid on June 16, 2012.

The Landlord seeks a monetary order for \$200.00 in unpaid rent. The Tenant disputes this stating that she withheld \$200.00 from the November rent because of issues regarding the tenancy. Both parties confirmed that the Landlord issued a 10 day notice to end tenancy issued for unpaid rent on November 21, 2012 and that it was posted on the rental unit door where the Tenant received it.

I find based upon the Tenant's direct testimony that she did withhold rent of \$200.00 and that the Landlord did properly serve her with the notice to end tenancy. The Landlord has established a claim for unpaid rent of \$200.00.

The Tenant seeks a monetary claim for \$2,500.00. This consists of \$300.00 in lost daycare wages, \$1,750.00 for the loss of quiet enjoyment, \$250.00 for the loss of cheques/mail and \$200.00 in the loss of laundry facilities. The Landlord disputes these claims.

The Tenant seeks \$300.00 for \$100.00 a week for 3 weeks because of lost daycare wages. The Tenant states that because of the upstairs tenant's harassment for 1 week in August and 2 weeks in November, the Tenant's daycare wages were lost because the child's parent refused to bring her child to the Tenant for care. The Landlord disputes this claim and states that she was unaware of the Tenant's daycare services. The Landlord also states that harassment was two ways between her and the upstairs Tenants. The Landlord states that she tried to mediate between the two and has provided a letter that was sent to both parties to try and work it out. The Tenant states that she gave written notice to the Landlord in July of 2012 warning the Landlord about the harassment from the upstairs Tenants. The Landlord disputes this.

The Tenant also seeks \$1,750.00 for the loss of quiet enjoyment because of the harassment from the upstairs Tenants. The Tenant states that this is an estimate based upon recovery $\frac{1}{2}$ of the \$700.00 monthly rent for $2\frac{1}{2}$ months. The Landlord disputes this stating that there was ongoing cross complaints between the two parties over smoking and that an attempt at mediating the complaints between the two resulted in warnings to both parties. The Landlord states that the upstairs Tenants have vacated the rental unit.

The Tenant seeks \$250.00 for the loss of cheques/mail. The Tenant states that she was not receiving her mail and had to have some government cheques reissued. The Landlord disputes that the Tenant has not provided any type of warning/notice of this issue prior to the hearing. The Tenant stated in her direct testimony that the Canada Post Mail refused to deliver her mail and that this is not the fault of the Landlord.

The Tenant seeks \$200.00 for the loss of laundry facilities. The Tenant states that this amount is based upon an estimate because she lost the use of the laundry facilities in October and November for two months. The Landlord disputes this stating that no warning/notice was given to the Landlord regarding this claim until this dispute was filed. The Tenant states that she had to stop using the laundry for this time period because she was in fear of her safety because of the harassment from the upstairs Tenants.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Tenant has failed to provide sufficient evidence in her monetary claims that she suffered any monetary losses or that these losses were the result of the Landlord's negligence. The Tenant's application is dismissed.

The Landlord has established a monetary claim of \$200.00 for unpaid rent. The Landlord is entitled to a monetary order under section 67 for \$200.00.

Conclusion

The Landlord is granted a monetary order for \$200.00.
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: January 14, 2013

Residential Tenancy Branch

