



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF, CNR, CNC, MNDC, MNSD, O

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, for money owed or compensation for damage or loss and recovery of the filing fee. The Tenant has made an application to cancel a notice to end tenancy issued for unpaid rent, to cancel a notice to end tenancy issued for cause, a monetary claim for money owed or compensation for damage or loss and for the return of the security deposit.

Both parties attended the hearing by conference call and gave testimony. The Landlord has confirmed receiving the Tenant's notice of hearing package, but not the Tenant's documentary evidence. The Tenant states that the evidence package was mailed to the Landlord on July 12, 2013. The Tenant has confirmed receiving the Landlord's notice of hearing package, but not the Landlord's documentary evidence. The Landlord states that it was mailed to the Tenant. I find that both parties have failed to satisfy me that the documentary evidence of the other party was properly served. The Tenant's documentary evidence shall not be referred to for this hearing as it shall be highly prejudicial to the Landlord. I also find that the Landlord has failed to properly serve the Tenant as there is no record of any documentary evidence being submitted by the Landlord for this hearing to the Branch or to the Tenant. Both parties were advised that they could verbally provide their evidence for the hearing.

During the hearing both parties agreed that possession was no longer an issue as the Tenants had vacated the rental unit on July 10, 2013. The Tenant, J.S. stated that they moved out in compliance with a 1 month notice to end tenancy. As such, no further action is required for the possession issues for both parties.

The Tenant's also withdrew their remaining claims for a monetary order. The Landlord had no objections. No further action is required for this portion of the applications.

At the end of the hearing, the Tenant provided a new mailing address as they have moved. The Tenant's address shall be updated regarding these two files.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Background and Evidence

Both parties agreed that the monthly rent was \$1,200.00 and that a \$600.00 security deposit was paid. Both parties also agreed that a 10 day notice to end tenancy issued for unpaid rent of \$300.00 by the Landlord and served on the Tenant

The Landlord states that the Tenant's failed to pay rent of \$300.00 for June and no rent has been paid for July 2013 of \$1,200.00. The Tenants claim that a verbal agreement with the Landlord was reached to forgive the \$300.00 in exchange for repair work at the rental property performed by the Tenants for the outstanding rent for June 2013. The Landlord disputes this. The Tenants also state that they moved out in compliance to a notice to end tenancy given by the Landlord.

Analysis

I accept the undisputed testimony of both parties that a 10 day notice to end tenancy for unpaid rent was properly served upon the Tenant by the Landlord.

I prefer the evidence of the Landlord over that of the Tenant. The Tenant was unable to provide sufficient evidence to satisfy me that there was an agreement for repair work in lieu of rent arrears. The Landlord has established a monetary claim for \$300.00 in June rent arrears. However, the Landlord has failed to provide sufficient evidence to satisfy me of the claim for the loss of rental income for July 2013. Both parties agreed that the Tenants vacated the rental unit on July 10, 2013. The Landlord has failed to provide sufficient evidence to satisfy me of any efforts to mitigate the losses for July rent. On this basis, I grant a nominal award of \$600.00 equal to unpaid rent for July 1 to 15, 2013. The remaining July 16 to 31, 2013 portion of the rent claim is dismissed with leave to reapply.

The Landlord has established a total monetary claim of \$900.00. The Landlord is also entitled to recovery of the \$50.00 filing fee. As both parties are in agreement that the Landlord currently holds the \$600.00 security deposit, I order that the Landlord retain the \$600.00 security deposit in partial satisfaction of the claim. The Landlord is granted

a monetary order for \$350.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$350.00.
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: July 24, 2013

Residential Tenancy Branch

