



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF, DRI, CNC, CNR, OLC, PSF, OPT, AAT, LAT

Introduction

There are applications filed by both parties. The Landlord seeks an order of possession and a monetary order for unpaid rent, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The Tenant seeks an order to dispute an additional rent increase, to cancel a notice to end tenancy issued for cause, to cancel a notice to end tenancy issued for unpaid rent, an order for the Landlord to comply with the Act, Regulations or tenancy agreement, to provide services or facilities required by law, to obtain an order of possession of the rental unit, to be allowed access to or from the rental unit, to authorize the tenant to change the locks to 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 notice of hearing package submitted by the other party, I am satisfied that both parties have been properly served.

At the beginning of the hearing, both parties confirmed that the Tenant had vacated the rental on the date of the hearing on July 31, 2013. The Landlord confirmed that he no longer required an order of possession and the Tenant states that she is withdrawing her application in its entirety. No further action is required for possession of the rental unit and of the Tenant's claims.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

This Tenancy began on May 31, 2013 as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$950.00 payable on the last day of the previous month. A security deposit of \$475.00 was paid on May 16, 2013.

The Landlord states that a 10 day notice to end tenancy for unpaid rent dated July 4, 2013 was personally served to the Tenant on the same date. The notice states that \$950.00 was due on June 30, 2013 (for July rent) and the Tenant failed to pay \$50.00 for utilities after a written demand was made on July 4, 2013. Both parties confirmed that the 10 day notice to end tenancy for unpaid rent was served on July 4, 2013.

The Tenant confirmed in her direct testimony that rent of \$950.00 for July 2013 was unpaid, but disputes the \$50.00 utilities on the notice. The Landlord confirmed in his direct testimony that no written notice has been given to the Tenant for utilities.

The Landlord states that the Tenant placed a stop payment on the July 2013 rent cheque. The Tenant confirmed this in her direct testimony and stated that she gave the Landlord a rent cheque for July 2013 for \$475.00 and asked that the security deposit of \$475.00 be applied to the remainder of the rent. The Landlord states that he did not give permission to apply the \$475.00 security deposit to the outstanding rent.

The Landlord seeks a monetary order for \$2,000.00. This consists of \$950.00 for July unpaid rent, \$950.00 for the loss of rental income for lack of notice and \$100.00 for NSF charges. The Landlord relies on addendum condition #4, "The tenant agrees to pay a \$50.00 fee for any and all returned cheques." The Landlord stated that he had 1 showing for July 15th after placing an ad on craigslist. The Landlord stated he placed other ads, but cannot state how many or where they were placed.

Analysis

I accept the undisputed testimony of both parties that the July 2013 was unpaid. The Landlord has established a monetary claim for \$950.00.

I find that the Landlord's claim of loss of rental income for August 2013 rent of \$950.00 to be premature as of the date of this hearing and it is unknown when or if the Landlord will be able to re-rent the unit. This portion of the Landlord's claim is dismissed with leave to reapply.

The Landlord has failed to provide sufficient details of any utility arrears owed by the Tenant or of a demand (written request) of payment for the amount sought. This portion of the Landlord's claim for utilities is dismissed.

I find the Landlord's claim for \$100.00 for two NSF charges to be against the Act. Although the Landlord has specified the charge of \$50.00 per NSF charge in the addendum to the tenancy agreement, the Landlord may not contract outside of the Act. I find that this portion of the Landlord's claim is dismissed.

The Landlord has established a total monetary claim of \$950.00 in unpaid rent for July 2013. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$475.00 security deposit in partial satisfaction of the claim and I grant a monetary order for \$525.00 for the balance due. 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 \$525.00.
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 31, 2013

Residential Tenancy Branch

