



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC, CNR, MNDC, RP

For the landlord – OPR, OPC, MNR, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel both the One Month Notice and the 10 Day Notice to End Tenancy; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and for an Order for the landlord to make repairs to the unit, site or property. The landlord applied for an Order of Possession for unpaid rent or utilities; for an Order of Possession for cause; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

The tenant, the landlord's agent and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

At the outset of the hearing the parties advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws their applications for an Order of Possession and the tenant withdraws the application to cancel the Notices.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The tenant testifies that this tenancy started on January 01, 2007 and the landlord testifies that the tenancy started on October 01, 2006. The tenant testifies that he has moved from the rental unit on this date of August 01, 2013. Rent for this unit was \$515.00 per month due on the 1st day of each month. The tenant paid a security deposit of \$247.50.

The tenant testifies that the landlord's agent asked the tenant to vacate and then served the tenant with a One Month Notice for cause. The tenant testifies that the landlord must pay the tenant four months' rent in compensation for this Notice as the landlord wants to sell the unit and therefore the tenant testifies the landlord has given the tenant an illegal notice.

The landlord's agent testifies that the landlord had reasons to serve the tenant with the One Month Notice and as the landlord has not yet decided to sell the unit the landlord has no reason to serve the tenant with a Two Month Notice.

The landlord testifies that the tenant has failed to pay rent for July, 2013 of \$515.00 and the tenant was served a 10 Day Notice to End Tenancy. The tenant was asked by the landlord to pay the rent however no rent has been forthcoming. The landlord also seeks to recover unpaid rent for August, 2013 as the tenant did not inform the landlord that he was vacating the rental unit on the day of the hearing and this is the first the landlords have heard that the tenant has vacated on this date at this hearing.

The tenant testifies that on July 01, 2013 the landlord came to collect the rent and was banging on the tenant's door however the tenant was in the washroom and was unable to answer the door. The tenant testifies that later that night he deposited the rent cheque in the landlord's mail box. The landlord said she did not receive the rent cheque and the tenant agrees that the rent cheque for July has not been cashed by the landlord. The tenant disputes the landlords claim for unpaid rent for August as the tenant testifies he did vacate the unit on August 01, 2013. The tenant agrees that he did not inform the landlord that he was vacating on this date.

The tenant has applied for an Order for the landlord to make repairs to the unit. I have not dealt with this section of the tenants claim as the tenant has vacated the unit and therefore no Orders would be enforceable.

The landlord requests permission from the tenant to keep the security deposit of \$247.50. The tenant declines to give the landlord permission. The tenant provided his forwarding address at the hearing and wants the landlord to follow procedures and return the security deposit as no inspections were done at the start of end of the tenancy.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for compensation of four months' rent due to the One Month Notice served upon the tenant. There is no provision under the *Act* for a tenant to receive compensation from a landlord for moving costs when a One Month Notice is served upon a tenant for Cause. There is provision under the *Act* for compensation equivalent to one month's rent when a Two Month Notice has been served upon a tenant. As the landlord has not served the tenant with a Two Month Notice then the tenant is not entitled to any compensation. The tenant's application for compensation of \$2,307.50 is therefore dismissed.

With regards to the landlords claim for unpaid rent for July; I refer the parties to s. 26 of the Act which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant argues that he did pay rent by cheque to the landlord on July 01, 2013, the landlord disputes that the tenant has paid rent. It is my decision that had the tenant left a rent cheque for the landlord on July 01, 2013 and the landlord did not receive it then the tenant could have questioned this or reissued the rent cheque within five days of receiving the 10 Day Notice. As the tenant failed to do so, it is my decision that the tenant has insufficient evidence to show that rent was paid on July 01, 2013 or five days after receiving the 10 Day Notice and I therefore uphold the landlords application for a Monetary Order for **\$515.00** for Julys rent.

With regard to the landlords claim for a loss of rent for August, 2013; The tenant did not vacate the rental unit until August 01, 2013. The tenant failed to notify the landlord in advance that he did intend to vacate the rental unit therefore the landlord was unable to place an advertisement to attempt to re-rent the unit for August 01, 2013. However, as it is still at the beginning of August the landlord may still have the opportunity to re-rent the unit during the month. I therefore limit the landlords claim for a loss of rent to the first 15 days in August to the amount of **\$249.19**.

As the landlord has been partially successful with this claim I find the landlord is entitled to recover the filing fee of **\$50.00**. A Monetary Order has been issued to the landlord for the amount of \$814.19 pursuant to s 67 and 72(1) of the Act.

As the tenant provided his forwarding address at the hearing and the landlord has not applied to keep the security deposit in their application the landlord must comply with section 38 of the Act with regards to the security deposit.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$814.19**. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

If the landlord is unable to re-rent the unit for August 15, 2013 the landlord is at liberty to reapply for the remainder of August rent.

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: August 02, 2013

Residential Tenancy Branch

