



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNR, MNSD, FF, CNC, MNDC

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, to keep all or part of the security deposit and recovery of the filing fee. The Tenant has also made an application for an order cancelling the notice to end tenancy issued for unpaid rent, a monetary claim for money owed or compensation for damage or loss and recovery of the filing fee.

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

Both parties have confirmed that the Tenant vacated the rental unit on September 1, 2013 and that the Landlord's request for an order of possession and the Tenant's request to cancel the notice to end tenancy are no longer required as the Landlord now has possession of the rental unit. As such, no further action is required regarding possession for both parties.

During the hearing, the Tenant clarified that they have moved from the address indicated on their application and have provided a new mailing address. As such, these files shall be updated to reflect this change.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for loss of rental income?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to a monetary order?

Background and Evidence

Both parties agreed that this Tenancy began on April 29, 2013 on a fixed term tenancy ending on April 30, 2014 as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$1,795.00 payable on the 1st of each month and a security deposit of \$890.00 was paid. A condition inspection report for the move-in was completed on April 29, 2013.

Both parties agreed that the Tenant vacated the rental unit on September 1, 2013.

The Landlord seeks a monetary order for \$1,795.00 for the loss of rental income for September 2013. The Tenant disputes this stating that they entered into a mutual agreement to end the tenancy on September 1, 2013 which was dated July 17, 2013. The Landlord disputes this stating that the agreement was sent to the Tenant on July 17, 2013 proposing an end to the tenancy along with several conditions.

“-The Landlord will pay the Tenant 1 months rent to vacate the rental unit on September 1, 2013.

-The Landlord will pay the Tenant \$300.00 moving out building fees.

-The offer is good until July 31, 2013.

The letter requests that the Tenant sign and return the form with the mutual agreement to end tenancy to the Landlord.”

The Landlord states that Tenant did not sign and return a copy of the agreement to confirm acceptance and as such that there was no agreement in place. The Tenant disputes this stating that an email was sent on July 26, 2013 confirming the agreement. The Landlord disputes this. The Tenant refers to emails in the Landlord’s documentary evidence that she sent to the Landlord confirming the agreement. The Tenant also refers to an email dated July 29, 2013 which states, “Please be advised I have put through a dispute for your 30 day notice. I have also applied for \$900.00 for 90 days of washing dishes thus far, \$300.00 for move out fees, \$1,800.00 for the Aug. Rent (I have not deducted the \$300.00 for the dishes to this amount) as per your letter to me. As there is no damage to the unit we are expecting our entire deposit be returned. As we have agreed we will be moving out on the 1st of September.”

The Tenant seeks a monetary order for \$2,995.00. This consists of \$1,795.00 for the compensation of 1 months free rent for moving out on September 1, 2013, \$300.00 for

recovery of moving out fees and \$900.00 as compensation for not having a functioning dishwasher for 90 days (\$10.00/hr X 90 days). The Tenant states that they agreed to mutually end the tenancy as per an offer dated July 17, 2013 by the Landlord which stated that 1 months compensation (\$1,795.00) and \$300.00 for the building move-out fees would be paid to the Tenants by the Landlord upon moving out. The Tenant also states that there have been ongoing dishwasher problems since (May 2013) moving in resulting in the Tenants having to manually wash dishes for a 90 day period. The Landlord disputes these claims stating that the Tenant did not return a signed copy agreeing to the terms of the mutual agreement even though it was presigned. The Landlord states that she has never received a copy of the signed agreement up to the date of this hearing to confirm the Tenant's acceptance. The Landlord also states that upon being notified by the Tenant on May 1, 2013 of a potential dishwasher problem and again on May 2, 2013 stating that there was no dishwasher problem, the Landlord was not notified again until the end of June 2013 for which the Landlord attended and had a plumber attend on June 28, 2013 to service the dishwasher and place a pump. The Landlord has submitted a copy of the invoice from Agile Service Group as confirmation.

Analysis

I find on a balance of probabilities that I prefer the evidence of the Landlord over that of the Tenant. The Tenant has failed to provide sufficient evidence to satisfy me that an acceptance was made of the mutual agreement and that the Landlord was properly notified as per the agreement. As such, I find that no agreement was in place and that the Tenant failed to provide proper notice to end the tenancy. However, the Landlord has failed to provide sufficient evidence to satisfy me of any efforts to mitigate any possible losses and that as of the date of this hearing on September 5, 2013, the Landlord has failed to provide sufficient evidence to satisfy me of the loss of rental income for the entire month September. As such, I find that the Landlord is only entitled to ½ of the monthly rent equal to \$897.50 for the first 15 days of the month. The Landlord's remaining portion of the claim is dismissed with leave to reapply as I find that this portion of the claim is premature.

As for the Tenant's claim, the finding made to determine the validity of the mutual agreement is that there was none. The Tenant has failed to establish a claim for the month of free rent and the recovery of the moving fee for the building. These portions of the Tenant's claim are dismissed.

In regards to the Tenant's claim for compensation of \$900.00 for the loss of use of a dishwasher for a 90 day period, I find that although it is clear based upon the Landlord's evidence that there was an inconvenience, the Tenant has failed to provide sufficient evidence to satisfy me that the Landlord failed to act appropriately and without any negligence. The Tenant's monetary claim for compensation for the loss of use of a dishwasher is dismissed.

The Landlord has established a total monetary claim for \$897.50. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$890.00 security deposit in partial satisfaction of the claim and I grant a monetary order for the balance due of \$57.50. 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 \$57.50.

The Landlord may retain the security deposit.

The Landlord's claim for the later half of the September rent is dismissed with leave to reapply.

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: September 06, 2013

Residential Tenancy Branch

