



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This is an application filed by the Landlord for an order of possession and a monetary order request 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 Landlord attended the hearing by conference call and gave undisputed testimony. The Tenant did not attend or submit any documentary evidence. The Landlord states that the Tenant was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on September 4, 2013 and has provided a copy of the Customer Receipt Tracking number as confirmation. The Landlord stated in his direct testimony that he performed an online search of the Canada Post website and found that the package was received by the Tenant and signed for on September 9, 2013.

The Landlord clarified at the beginning of the hearing that he wished to withdraw his application for an order of possession as the Tenant had vacated the rental unit on September 10, 2013. As such, no further action is required. The Landlord also clarified that he wished to amend his monetary claim for October rent from \$1,325.00 to \$662.50 as the Landlord was able to re-rent the unit for October 15, 2013 and now only wishes compensation for October 1 to 15 of \$662.50.

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 October 1, 2011 on a fixed term tenancy ending on September 30, 2012 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$1,325.00 payable on the 1st of each month and a security of \$662.50 was paid on September 7, 2011.

The Landlord states that the Tenant was served with a 10 day notice to end tenancy issued for unpaid rent dated August 25, 2013 in person. The notice states that rent of \$1,325.00 was due on August 1, 2013 and unpaid. The Landlord states that no rent has been paid since the notice was served upon the Tenant and that the Tenant has not filed an application for dispute resolution to dispute the notice.

The Landlord seeks a monetary claim of \$4,000.00. This consists of \$1,325.00 for August rent arrears, \$1,325.00 for September rent arrears, \$662.50 for October 1-15 rent arrears, \$90.00 for a Roman bathroom figurine, \$240.00 for 2 bedroom lamps, \$250.00 for 10 picture frames, \$1,200.00 for a bed and box spring, \$180.00 for a duvet, \$250.00 for a duvet cover and sheet set, \$20.00 for 8 wine glasses and \$40.00 for a clicker remote for the garage. The Landlord state that this was a furnished suite for which the Tenant removed items listed on two page addendum of items furnished with the rental unit. The Landlord states that these items have not been yet replaced and the amounts for each item are estimated.

Analysis

I accept the undisputed evidence of the Landlord and find that the Tenant was properly served with the 10 day notice to end tenancy issued for unpaid rent. The Tenant failed to pay the rent due and did not file an application for dispute resolution to dispute the notice. The Tenant is conclusively presumed to have accepted that the Tenancy was at an end.

I find that the Landlord has established a claim for unpaid rent of \$3,312.50. This consists of rent arrears of \$1,325.00 for August, \$1,325.00 for September and \$662.50 for October 1 to 15, 2013. As for the Landlord's claim for compensation for loss of missing items totalling, \$2,270.00. Although the Landlord has provided sufficient undisputed evidence that the Tenant removed items of the furnished rental unit, the Landlord relies on estimates for all of the missing items. The Landlord has stated that none of the items have been replaced.

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.

The Landlord has failed to provide sufficient evidence of an actual amount required to compensate for the claimed loss. The Landlord's claims for the missing items are dismissed.

The Landlord has established a total monetary claim of \$3,112.50. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$662.50 security deposit in partial satisfaction of the claim and I grant a monetary order for the balance of \$2,700.00. 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 \$2,700.00.
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: October 11, 2013

Residential Tenancy Branch

