



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on a Notice to End Tenancy for Unpaid Rent dated October 2, 2013, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim. The landlord is also claiming compensation for damages.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matters

Order of Possession

At the outset of the hearing, the landlord stated that they are no longer seeking an Order of Possession as the tenant vacated the unit on October 30, 2013.

The landlord still seeks a monetary order for the rent owed.

Damages

In regard to the landlord's monetary claim, I find that the primary issue before me to determine is whether or not the landlord's 10-Day Notice to End Tenancy for Unpaid Rent should be enforced with an Order of Possession and a Monetary Order for rent.

However, the landlord has also included a monetary claim for damages under section 67 of the Act for damages.

The Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

In this instance, I found that the landlord's monetary claim pertained to a separate and distinct section of the Act that was not connected to the Ten-Day Notice to End Tenancy for Unpaid Rent.

I find that the landlord's request for a monetary order for damages to the suite would be dealt with *after* the tenancy had ended and the move out condition inspection, under section 45 of the Act has been completed. I find that, at the time the application was made, the tenant had not yet vacated and therefore, the monetary claim for damages was premature at the time

Accordingly, I find that the portion of the landlord's application related to the for damages, must be severed from the application before me and should be dealt with through a separate application under section 67 of the Act.

Therefore the landlord's request for compensation for damages is dismissed with leave to reapply.

The hearing will proceed in determining whether the landlord is entitled to an Order of Possession and a Monetary Order for rental arrears based on the 10-Day Notice to End Tenancy for Unpaid Rent.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for rental arrears?

Background and Evidence

The landlord testified that the tenancy began on July 5, 2013, at which time the tenant paid a security deposit of \$450.00. The landlord testified that when the tenant failed to pay \$900.00 rent due on October 1, 2013, a 10-Day Notice to End Tenancy for Unpaid Rent was issued and served to the tenant by posting it on the door on October 2, 2013.

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated October 2, 2013, with effective date of October 11, 2013. The landlord testified that the tenant did not pay the arrears and moved out on October 30, 2013. The total claim is for \$900.00 plus the \$50.00 cost of the application.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by posting it on the door. The tenant has not paid the outstanding rent and did not apply to dispute the Notice.

I find that the landlord has established a total monetary claim of \$950.00, comprised of rental arrears totaling \$900.00 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$450.00 in partial satisfaction of the claim leaving a balance due of \$500.00.

I hereby grant the Landlord an order, under section 67 of the Act, for \$500.00. This order must be served on the Respondent and is final and binding. If necessary it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord's claim for damages left in the suite is dismissed with leave to reapply.

Conclusion

The landlord is successful in the application and is granted a monetary order for rental arrears. The request for the order of possession was found to be moot, as the tenant vacated prior to the hearing and the landlord's claim for damages is dismissed with 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: November 19, 2013

Residential Tenancy Branch

