



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, CNR, FF, LAT

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed and loss of revenue, pursuant to Section 67;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46;
- An order allowing the tenant to change the locks; and
- A monetary order for the recovery of the filing fee, pursuant to Section 72

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.

At the outset of the hearing, the parties advised that the tenant had vacated the rental unit on November 1, 2013. Therefore I find the landlord's request for an Order of Possession and the tenant's request to cancel the Notice and to change the locks are now moot.

The hearing will proceed with respect to the landlord's monetary claims for rental arrears for October 2013 and loss of revenue for the month of November, 2013.

Issue to be decided

- Is the landlord entitled to an order of possession for unpaid rent and compensation for loss of revenue?

Background and Evidence

The tenancy started in July 2013 with rent set at \$950.00 per month payable on the 1st day of each month and a security deposit of \$475.00 and pet damage deposit of \$475.00 was paid by the tenant. The landlord testified that on September 30, 2013, the tenant gave notice to move out at the end of October. However, the failed to pay rent for October 2013 and a Ten Day Notice to End Tenancy for Unpaid Rent was issued and served on the tenant on October 9, 2013. In evidence was a copy of the Ten Day Notice to End Tenancy for Unpaid Rent and a copy of the tenancy agreement.

The tenant testified that they had an agreement that the tenant's security deposit and pet damage deposit would be used for the final month rent.

The landlord testified that the tenant did not pay the rental arrears of \$950.00 for October, which is being claimed. The landlord testified that, although the tenant did vacate on November 1, 2013, in compliance with the tenant's written notice, the tenant did not permit the landlord to show the unit to prospective renters. The landlord testified that written notice was provided to the tenant, but the tenant refused to cooperate and, as a result, the landlord was not able to find a new renter for the month of November and suffered a loss of \$950.00 which is being claimed.

Analysis:

In regard to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. If the tenant does not pay rent when it is due, the landlord can issue a Notice to End Tenancy for Unpaid Rent under section 46 of the Act. I find that the Notice was properly issued and served and that the tenant owed rent for October in the amount of \$950.00 when he vacated. I find that the landlord is entitled to compensation of \$950.00 for October rent..

In regard to the landlord's claim for compensation for loss of revenue for the month of November 2012, I find that this would be not rental arrears, but a claim in damages.

In a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test for damages below:

An Applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, I find that the landlord is required to prove the existence and value of the damage or loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I find that the tenant failed to follow the Act by not permitting the landlord to access the unit during October in order to show it to possible renters. I find that, because of the tenant's violation of the Act in this respect, the landlord suffered a loss of \$950.00 revenue for the month of November 2013. I find that the landlord is entitled to be compensated \$950.00 in damages.

I find that the landlord is entitled to total compensation of \$1,950.00, comprised of \$950.00 rental arrears for October 2013, \$950.00 loss of revenue for November 2013 and the \$50.00 cost of the application. I order that the landlord retain the tenant's \$475.00 security deposit and \$475.00 pet damage deposit in partial satisfaction of the claim, leaving \$1,000.00 still outstanding.

I hereby dismiss the tenant's application in its entirety without leave and issue a monetary order in favour of the landlord for \$1,000.00. This Order must be served on the tenant in person or by registered mail. This decision and order is final and binding and may be enforced through Small Claims Court if necessary.

Conclusion

The tenant's application is dismissed in its entirety without leave and the landlord is successful in the application and is granted a monetary order for rent and loss of revenue.

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 21, 2013

Residential Tenancy Branch

