



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, MNSD, FF, CNR, LAT, LRE, MNDC, MT, O, PSF, SS

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

Tenants application

First of all it is my decision that I will not deal with the multitude of issues that the tenant has put on her application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the request to cancel a Notice to End Tenancy that was given for nonpayment of rent, and the request for the return of her security deposit, and I dismiss the remaining claims with liberty to re-apply.

Landlord's application

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, a request for a Monetary Order for outstanding rent, and a request for recovery of the filing fee. The landlord is also requesting an Order to keep the full security deposit towards the claim.

Issue(s) to be Decided

The issues are whether or not to uphold or cancel the notices to end tenancy, and whether or not to issue an Order for outstanding rent.

Background and Evidence

First of all an Order of Possession is no longer required because after about 10 min. into the hearing the tenant informed me that she has vacated the rental unit and has returned possession to the landlord.

The tenant claims that she vacated the rental unit on November 1, 2013, however the landlord claims that the tenant did not vacate the rental unit until November 16, 2013.

The tenant has admitted that she failed to pay rent in the amount of \$205.00 for the month of October 2013, and \$775.00 for the month of November 2013.

The tenant stated that she feels she should not have to pay any further rent, because she believes the rental unit was not in livable condition.

The landlord is requesting an Order for the outstanding rent, and for lost rental revenue for December 2013 as well, as the rental unit has not yet re-rented.

Analysis

It's my finding that it's more likely that the tenant vacated the rental unit on November 16, 2013, because I find it very unlikely that the landlord would've served a Notice to End Tenancy on November 2, 2013 had the tenant already vacated, and I also find it unlikely that the landlord would've applied for an Order of Possession on November 8, 2013 had the tenant already vacated.

Therefore it's my decision that I prefer the testimony of the landlord and accept that the tenant vacated the rental unit on November 16, 2013.

The tenant has admitted that there is \$205.00 outstanding for the month of October 2013 and that the full November 2013 rent of \$775.00 is also outstanding and although the tenant stated she does not believe she should have to pay the rent due to the condition of the rental unit, the tenant cannot withhold the rent without first getting an Order from a dispute resolution officer allowing her to do so. I therefore allow the landlords claim for that outstanding rent.

Further, I find it unlikely that the landlord will be able to re-rent the unit before the end of December 2013, and therefore I also allow the landlords request for the lost rental revenue for the month of December 2013 in the amount of \$775.00.

Conclusion

As stated above there is no need for me to cancel or uphold the Notice to End Tenancy, or issue an Order of Possession because the tenant has vacated the rental unit and has returned possession to the landlord.

Landlord's application

I have allowed the landlords request for a Monetary Order totaling \$1755.00, and I therefore Order that the landlord may retain the full security deposit of \$387.50 and I have issued a Monetary Order for the remaining \$1367.50, plus the landlords filing fee of \$50.00 for a total Order of \$1417.50.

Tenant's application

The tenant's application for the return of her security deposit is dismissed without leave to reapply.

I further Order that the tenant pay the filing fee of \$50.00, which was previously waived, to the director of the Residential Tenancy Branch

As stated above the remainder of the tenants claim 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: December 04, 2013

Residential Tenancy Branch

