



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on January 31, 2014 and then by a document processor in February, 2014. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

It should be noted a previous hearing was held regarding this tenancy and issues for unpaid rent for August, 2013 and the security deposit were already decided.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?

Background and Evidence

The Landlord said this tenancy started on July 13, 2013 as a fixed term tenancy with an expiry date of June 30, 2014 and the Tenant said she did not sign the tenancy agreement and the Tenant believed the tenancy was on a month to month basis. The Landlord confirmed the tenancy agreement was not signed. Rent was \$1,550.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$750.00 on July 8, 2013. The Landlord said the Tenant moved out of the rental unit on July 26, 2013 without notice to the Landlord. The Tenant confirmed that she moved out of the unit on July, 26, 2013.

The Landlord said that he advertised the unit for rent from July through to September and finally rented the unit for October 31, 2013. The Landlord said he advertised on the internet and reduced the rent to try to rent the unit as quickly as possible. The Landlord said he thought information from the previous hearing would be brought forward to this hearing so he did not submit any evidence for this hearing. The Landlord said he is requesting lost rental income for September, 2013 in the amount of \$1,550.00 based on his belief that the tenancy was a fixed term tenancy with an expiry date of June 30, 2014 and he was unable to rent the unit until October 1, 2013.

The Tenant said she did not sign the tenancy agreement and only received the tenancy agreement during the previous hearing; therefore the Tenant said she believes the tenancy was a month to month tenancy. The Tenant continued to say she told the Landlord she could not afford the rental unit without a roommate and she did not find a roommate so she ended the tenancy as she could not afford the rental unit. Further the Tenant said she gave written notice to end the tenancy to the Landlord on July 31, 2013 and she paid the August rent of \$1,550.00. The Tenant said she believes her obligations to the Landlord have been met. The Tenant continued to say that she too thought evidence from the previous hearing would be carried forward to this hearing so she only submitted a copy of the previous hearing decision to this hearing.

The Tenant said in closing she believes the tenancy was a month to month tenancy, she gave writing notice to the Landlord on July 31, 2013 and she paid the August, 2013 rent so the Tenant said she does not owe the Landlord rent for September, 2013.

The Landlord said the tenancy was a fixed term tenancy and he was not able to rent the unit until October 1, 2013 therefore the Tenant is responsible for the rent for September 1, 2013.

Analysis

In this situation both parties believed evidence from the previous hearing would carry forward to this hearing and as a result no supporting evidence except the previous decision was submitted to the hearing. There is no evidence to support the Landlord's application or the Tenant's response to the Landlord's application. Therefore this is a situation of one party's word against the other party's word. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. Consequently as the Landlord did not provide any evidence to corroborate his claims; I find that there is no evidence to prove this was a fixed term tenancy and therefore the Landlord's claim for lost rental income

based on a fixed term tenancy is not proven. I dismiss the Landlord's application without leave to reapply based on a lack of evidence.

As the Landlord was not successful in this matter I order the Landlord to bear the cost of the filing fee of \$50.00 that the Landlord has already paid.

Conclusion

The Landlord'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: May 07, 2014

Residential Tenancy Branch

