



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNDC, MNSD, FF
CNR, OLC, O

Introduction

This hearing was convened by way of conference call concerning applications filed by the landlord and by the tenant. The landlord has applied for an order of possession for cause and for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Both parties attended the hearing and the tenant called one witness. The parties and the witness each gave affirmed testimony, and the parties provided evidentiary material to the Residential Tenancy Branch and to each other prior to the commencement of the hearing. However, the tenant provided 25 pages of evidence to the landlord by sending it by certified mail on July 25, 2014 and the landlord stated that it hasn't been received. The Residential Tenancy Branch Rules of Procedure require parties to exchange evidence at least 5 days before the hearing, and the *Act* specifies that documents sent by mail are deemed to have been received 5 days after mailing. Therefore, I find that the landlord is deemed to have received the evidence package on July 30, 2014, being the day of this hearing, and the landlord would have had no time to review that evidence, and I hereby preclude that package as evidence for this hearing.

The parties were given the opportunity to cross examine each other on the remaining evidence and on the testimony provided, all of which has been reviewed and is considered in this Decision.

No further issues respecting service or delivery of documents or evidence were raised.

During the course of the hearing, the parties advised that the tenant has vacated the rental unit, and the landlord's applications for an order of possession are withdrawn. Similarly, the tenant's application for an order cancelling a notice to end tenancy is also withdrawn. The landlord also stated that the landlord's application for a monetary order is for unpaid rent only, and the application for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is withdrawn.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically to return the security deposit to the tenant?

Background and Evidence

The landlord testified that this month-to-month tenancy began on October 1, 2013 and ended on June 30, 2014. Rent in the amount of \$975.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. No move-in or move-out condition inspection reports were completed, however the landlord has provided a copy of the tenancy agreement.

The landlord further testified that the tenant paid rent by depositing money into the landlord's account at a financial institution or electronically, but never by cash. The tenant failed to pay any rent for the month of June, 2014 and on June 2, 2014 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord testified that the tenant moved out, but has still not paid the rent, and the landlord claims \$975.00 from the tenant in addition to the \$50.00 as recovery of the filing fee.

The landlord has also provided a copy of 2 notices to end the tenancy; a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a 1 Month Notice to End Tenancy for Cause. The latter is dated May 28, 2014 and contains an expected date of vacancy of June 28, 2014.

Also provided is a string of correspondence between the landlord and other tenants who state that they are moving out of the rental unit because of being bothered by the tenant's smoking in her rental unit. The first set of emails results in the landlord's response requesting that the tenants stay in the rental unit and the landlord would evict the tenant who is smoking. The tenants replied that they had already found accommodation. Also provided is a letter from the neighbouring tenant stating that the writer wishes to end his fixed term tenancy on December 15 as opposed to December 31, 2013 and that the writer wishes to pay half a month's rent. It also states that if the landlord is opposed to that, the tenant gives notice to vacate at the end of December. The letter is not dated.

The tenant testified that the landlord attended the rental unit on June 2, 2014 and fixed the stove. While there, the landlord demanded that rent be paid immediately or locks would be changed. The tenant's friend gave the tenant \$1,000.00 in cash, which the tenant gave to the landlord. The landlord was supposed to return with \$25.00 and a receipt but didn't. The tenant has provided a letter signed and dated June 3, 2014 from a person who states that on June 2, 2014 the person gave the tenant \$1,000.00 for the "concept of rent" because the landlord threatened to change locks and evict the tenant and the tenant's 6 year old child if rent wasn't paid the same day.

The tenant claims back the security deposit from the landlord in the amount of \$500.00, and testified that the landlord was not provided with the tenant's forwarding address in writing.

The tenant's witness' testimony referred to an agreement wherein the landlord agreed that the tenant could pay the rent in 2 installments and agreed that the tenant could use the shed.

Analysis

Where a party makes a monetary claim against another party, the onus is on the claiming party to prove the claim. In this case, the landlord testified that the tenant didn't pay any rent for the month of June, and the landlord issued 2 notices to end the tenancy. The tenant testified that the landlord demanded payment immediately when at the rental unit on June 2, 2014 or the landlord would change the locks and evict the tenant. The tenant also testified that she borrowed the money, and provided a letter in support of that. She paid the landlord cash and the landlord was supposed to return with \$25.00 and the receipt, but didn't. The landlord testified that the tenant moved out on June 30, 2014. The tenant did not dispute the 1 Month Notice to End Tenancy, but I find that the tenant moved out of the rental unit in accordance with the *Act* by its correct effective date.

I have also reviewed the letters and emails provided by the landlord. In considering the circumstances provided in the testimony and evidentiary material, I find it difficult to find that the landlord has established the claim. It's clear to me that the landlord was annoyed with the tenant for loss of another tenant, and perhaps receiving cash for June's rent might compensate the landlord for any other loss of revenue for other rental units. The evidence is one person's word against another, and I am not satisfied that the landlord has proven the claim.

I hereby order the landlord to return the tenant's security deposit, and I grant a monetary order in favour of the tenant in the amount of \$500.00.

Conclusion

For the reasons set out above, the landlord's application for an order of possession for cause is hereby dismissed as withdrawn.

The landlord's application for an order of possession for unpaid rent or utilities is hereby dismissed as withdrawn.

The landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed as withdrawn.

The landlord's application for a monetary order for unpaid rent or utilities is hereby dismissed without leave to reapply.

The tenant's application for an order cancelling a notice to end tenancy is hereby dismissed as withdrawn.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$500.00.

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: August 08, 2014

Residential Tenancy Branch

