



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNDC, MNSD, FF

Introduction

This is an application filed by the landlord for an order of possession and a monetary order for unpaid rent, for damage to the unit, site or property, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the landlord's submitted documentary evidence, I am satisfied that both parties have been properly served. The tenant did not submit any documentary evidence.

At the end of the hearing, the tenant provided a new mailing address via a postal box. This file shall be updated to reflect the change in the tenant's new mailing address.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order?
Is the landlord entitled to retain the security deposit?

Background and Evidence

There is no signed tenancy agreement, but both parties confirmed that the monthly rent was \$900.00 and that a \$450.00 security deposit was paid.

Both parties confirmed that the tenant vacated the rental unit on May 30, 2014 and that the landlord now has possession. As such no further action is required for possession of the rental unit.

The landlord states that the tenant was served with a 10 day notice to end tenancy issued for unpaid rent dated May 4, 2014. The notice states that the tenant failed to pay rent of \$900.00 that was due on May 1, 2014. The notice also displays an effective end of tenancy date of May 14, 2014. The landlord states that the tenant failed to pay rent for May of \$900.00. The tenant disputes this stating that rent was paid in cash, but that the landlord failed to provide a receipt. The tenant states that he withdrew the money from the bank to pay the rent in cash, but has not provided any evidence to support this.

The landlord seeks a monetary claim of \$2,261.16 which consists of \$900.00 for unpaid rent for May 2014, \$196.26 for unpaid utilities, \$450.00 for loss of rental income as the tenant failed to provide access to the rental unit for showings, \$225.00 for general cleaning and \$370.00 for estimated damages to the rental unit. The tenant disputes these claims stating that he did pay the rent in cash, but that the landlord failed to provide a receipt. The tenant confirms that he did not pay any utilities as it was in dispute that the landlord raised the utilities from 1/3 of the costs to 1/2 without his permission. The landlord disputes this stating that there was an agreement with the tenant to pay 1/2 of the utilities. The tenant states that the unit was left clean and that there was no damage caused by him. The tenant states that the damage being claimed was already there when he moved in. The landlord disputes this stating that he has pictures of the damages and that he obtained a verbal estimate for the cost of repairing the damages.

Analysis

I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant regarding the unpaid rent of \$900.00. The tenant confirmed receiving the 10 day notice to end tenancy issued for unpaid rent dated May 9, 2014. The tenant has failed to provide sufficient evidence to satisfy me that he paid cash to the landlord for the May 2014 rent. On this portion of the monetary claim, I find that the landlord has established a claim for \$900.00 in unpaid rent.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and

4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Although the photographs submitted by the landlord show that some damage has occurred and that cleaning is required, I find that the landlord has failed to provide sufficient evidence to satisfy me that the damage occurred due to the tenant. The tenant has disputed the landlords claims stating that damage occurred prior to him moving in. I also find that the landlord has failed to provide sufficient evidence of an actual amount required for compensation, ie. receipts or invoices or any evidence to show for the compensation sought. The landlords claim for utilities is being disputed as the tenant claims that the landlord raised the utilities from 1/3 to 1/2 of the invoice. The landlord has not provided sufficient evidence to satisfy me that there was an agreement for the cost of utilities. The tenant has disputed the landlords claims that state that he did not allow the landlord to make showings of the rental unit. The tenant stated that he would make an appointment, but not attend. The landlord relies on a hand written notation that he called several times to arrange showing appointments, but with no answer from the tenant. The landlord confirmed that he did not serve the tenant with proper written notice to show the rental unit as per the Act. For all of these reasons the landlord's remaining portions of the monetary claim are dismissed.

The landlord has established a monetary claim for \$900.00 in unpaid rent for May 2014. The landlord is entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$450.00 security deposit in partial satisfaction of the claim and I grant a monetary order under section 67 for the balance due of \$500.00. The landlord may file this order in the Small Claims Division of the Provincial Court for enforcement.

Conclusion

The landlord is granted a monetary order for \$500.00.
The landlord may retain the \$450.00 security deposit.

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: July 16, 2014

Residential Tenancy Branch

