



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

On August 8, 2014 the Landlord made an Application for Dispute Resolution (the "Application") through the Direct Request Proceedings requesting an Order of Possession and a Monetary Order for unpaid rent. This process involves a non-participatory hearing based on an undisputed 10 Day Notice to End Tenancy for Unpaid rent or Utilities (the "Notice").

The Landlord personally served the Notice of Direct Request Proceeding documents to the Tenant with a witness after being issued with them on August 20, 2014. However, in the interim time the Tenant made an Application for Review Consideration which was determined by the Arbitrator to be premature. It also came to light that the Tenant also made an Application on August 6, 2014 to dispute the Notice. Based on these circumstances, the Arbitrator conducting the Direct Request Proceedings made an Interim decision referring the Landlord's Application to a participatory hearing. The parties were both sent new Notice of Hearing letters for this participatory hearing.

The Landlord appeared and provided affirmed testimony during the hearing as well as written evidence prior to the hearing. There was no appearance by the Tenant during the 34 minute duration of the hearing or any submission of written evidence prior to the hearing. Furthermore, the Tenant had failed to pick up her Notice of Hearing documents after making her Application and as a result, her Application was marked as abandoned and her file was closed.

As a result, the hearing continued in the absence of the Tenant and I carefully considered the Landlord's written and oral testimony in this decision.

Preliminary Matters

The Landlord explained that the Tenant had vacated the rental suite at the end of August and that she had managed to re-rent the suite out for September, 2014.

Therefore the Landlord no longer required an Order of Possession. As a result, I dismissed this portion of the Landlord's Application.

The Landlord explained that she was also seeking to retain the Tenant's security deposit and recover the filing fee for the cost of her Application. As the Direct Request process prohibits the Landlord from making an Application to keep the Tenant's deposits and the recovery of the filing fee, and this hearing was adjourned to a participatory hearing, I find that the Landlord is now entitled to make these claims.

Based on the foregoing, I find it appropriate to amend the Landlord's Application for a request to keep the Tenant's security deposit and to recover the filing fee, pursuant to Section 64(3) (c) of the Act.

The Landlord also requested to make a monetary claim for damages to the rental suite. However, I determined that the Landlord's current Application cannot be amended for damages to the rental unit as this would not be sufficient enough to put the Tenant on notice for such a claim. However, the Landlord is at liberty to make another Application for damages to the rental unit.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent for August, 2014?
- Is the Landlord entitled to keep the Tenant's security deposit of \$650.00 in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started on April 1, 2014 for a fixed term of five months. A tenancy agreement was completed and rent was payable by the Tenants in the amount of \$1,400.00 on the first day of each month. The Tenants were requested to pay a pet damage and security deposit at the start of the tenancy; however, the Landlord testified that the Tenants only paid \$650.00 towards the deposits by July, 2014, which she still retains.

The Landlord testified that one of the Co-Tenants left the tenancy and the remaining Tenant, named on this Application, failed to pay rent on August 1, 2014. As a result, the Tenant was personally served with a Notice on August 2, 2014 in the amount of \$1,400.00 with an effective vacancy date of August 12, 2014. The Notice was provided in written evidence. As a result, the Landlord now seeks to recover the unpaid rent for August, 2014 in the amount of **\$1,400.00**.

Analysis

Section 26(1) of the Act states that a Tenant must pay rent when it is due under a tenancy agreement **whether or not** a Landlord complies with the Act.

Based on the undisputed testimony and written evidence presented by the Landlord, including the undisputed Notice, I accept that the Tenant failed to pay full rent for the month of August 2014. As a result, I award the Landlord loss of rent in the amount of **\$1,400.00** claimed.

As the Landlord has been successful in this matter, the Landlord is entitled to the **\$50.00** filing fee for the cost of this Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,450.00.

As the Landlord already holds the Tenant's **\$650.00** security deposit, I order the Landlord to retain this amount in partial satisfaction of the award, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded **\$800.00** in unpaid rent.

Conclusion

For the reasons set out above, I hereby grant a Monetary Order in the amount of **\$800.00** in favor of the Landlord pursuant to Section 67 of the Act. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment.

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: September 23, 2014

Residential Tenancy Branch

