



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with applications by the landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and a monetary order for unpaid rent, loss of income and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim.

The tenant applied for a monetary order for the landlord's share of utilities, for compensation and for the filing fee. The tenant also applied for the recovery of the security deposit.

Both parties attended the hearing and were given full opportunity to present evidence, make submissions and give affirmed testimony. The landlord acknowledged receipt of evidence submitted by the tenant.

The tenant moved out on August 15, 2014. Since the tenant has moved out, the landlord no longer requires an order of possession. Therefore, this hearing only dealt with the monetary claim of both parties.

Issues to be decided

Is the landlord entitled to a monetary order to recover unpaid rent, loss of income and the filing fee? Is the tenant entitled to his monetary claim for utilities and compensation?

Background and Evidence

The tenancy started on June 01, 2012 and ended on August 15, 2014. The monthly rent was \$1,600.00 due on the first of the month and did not include utilities. Both parties agreed that the tenant would pay the entire utility bill and send the landlord a copy of the bill. The landlord would reimburse the tenant 40% of the bill for the usage of the other occupants of the rental home. Prior to moving in, the tenant paid a security deposit of \$800.00.

The tenant filed copies of the utility bills and the landlord agreed that he had not paid his share for four months. During the hearing the landlord's portion was determined to be \$411.00 and both parties agreed to this.

The landlord testified that the tenant owed him for NSF charges and for sewer and water bills. The landlord did not make application for these items and did file any evidence to support this claim.

On August 01, 2014, the tenant gave the landlord notice to end the tenancy and moved out on August 15, 2014. The tenant agreed that he did not pay rent for August.

The landlord stated that he advertised the availability of the unit immediately and had a few showings but was unable to find a tenant for the remainder of August. The landlord is claiming unpaid rent for August and loss of income for September.

The tenant stated that the conditions in the rental unit were not satisfactory throughout the two years that he lived there and is claiming \$3,200.00 as compensation.

Analysis

Landlord's application

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I accept the landlord's evidence in respect of the claim. . In this case the tenant gave notice on August 01, 2014. Since rent is due on the first of the month, by providing notice on August 01, 2014, the earliest the tenant could end the tenancy would be September 30, 2014. The tenant agreed that he did not pay rent for August. Therefore the tenant owes the landlord **\$1,600.00** for August.

The landlord did make efforts to find a tenant but stated that at this time he has someone who is interested in renting the suite. Since the hearing took place on September 17, and there is a chance that the landlord has found or may find a tenant for September, I am dismissing the landlord's claim for loss of income for September with leave to reapply. The landlord will need to provide evidence of the date of the start of the new tenancy.

Since the landlord has proven his case, I award him the recovery of the filing fee of **\$50.00**.

Tenant's application:

Both parties agreed that the tenant is owed **\$411.00** for utilities.

Based on the testimony of the tenant regarding problems he faced during the tenancy, I find that by not applying for dispute resolution during the tenancy, the tenant took no steps to seek a solution to the problem. I further find that the tenant is now making a monetary claim for compensation after the tenancy ended and in response to the landlord's application for dispute resolution. Accordingly, I find that the tenant is not entitled to compensation because he failed to take steps to address the issue in a timely manner.

The tenant has proven a portion of his claim and therefore I award him the recovery of the filing fee of **\$50.00**.

The landlord has established a claim of \$1,650.00.

The tenant has established a claim of \$461.00. The landlord also has the security deposit of \$800.00 in his possession, which he must return to the tenant. Therefore the tenant's entitlement is \$1,261.00.

It will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$389.00 which consists of the difference in the entitlements of both parties.

Conclusion

The landlord may retain the security deposit and I grant the landlord a monetary order in the amount of \$389.00.

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: September 17, 2014

Residential Tenancy Branch

