



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was sufficiently served on the Tenants by posting on September 19, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the tenant FA by mailing, by registered mail to where the tenant resides. The landlord did not name AK as a tenant as he was out of the country at the time. AK stated he was a tenant and requested that he be added as a respondent. I ordered that the Application for Dispute Resolution be amended to add AK as a respondent. As AK appeared at the hearing I determined he was sufficiently served. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?

- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on July 1, 2014, end on June 30, 2015 and become month to month after that. The rent is \$2300 per month payable on the first day of each month. The tenants paid a security deposit of \$1175 on June 26, 2014.

The tenants paid the rent for July and August. The tenants failed to pay the rent for September and the landlord served a 10 day Notice to End Tenancy on September 19, 2014. The tenants vacated the rental unit and returned the keys at the end of September.

The landlord claimed \$2300 for non-payment of rent for September. She also claimed \$2300 for loss of rent for October. She testified the premises remain unrented despite placing many advertisements to rent the premises. .

The tenants only stayed in the rental unit for 3 days. The tenant objected to the fact that she saw the landlord enter the rental unit at the end of September and had some of her boxes stored in the rental unit when the rental unit was still rented to the tenants.

Analysis

Where the tenants have entered into a fixed term tenancy they are responsible to pay the rent for the entire fixed term subject to the landlord obligation to mitigate her loss and a breach of a material term of the tenancy. I determined the landlord has sufficiently attempted to mitigate her loss for October but was not able to successfully find another renter.

I do not accept the submission of the tenants they are not obliged to pay the rent for October. The landlord entered the rental unit after giving written notice for a reasonable purpose (to fix the cablevision and to obtain some documents she had stored in the

attic). The rental unit was empty of the tenant's possession. It is easy to see how a landlord might come to the conclusion the tenants had abandoned the rental unit. The tenant failed to prove the conduct of the landlord amounted to a breach of a material term of the tenancy.

Analysis - Order of Possession:

It is no longer necessary to consider the landlord's application for an Order for Possession as the tenants have vacated the rental unit and the landlord has regained possession.

Analysis - Monetary Order and Cost of Filing fee

I determined the tenants are liable in the sum of \$2300 for non payment of rent for September and \$2300 for loss of rent for October for a total of \$4600. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. **I granted the landlord a monetary order in the sum of \$4600 plus the sum of \$50 in respect of the filing fee for a total of \$4650.**

Security Deposit

I determined the security deposit plus interest totals the sum of \$1175. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$3475.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

The tenants acknowledged they still had the garage door opener and they agreed to return it to the landlord's agent (the downstairs tenant) within 24 hours. If the tenants fail to return the garage opener the landlord has liberty to re-apply.

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: November 28, 2014

Residential Tenancy Branch

