



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, MNR, MNSD, OLC, LRE, LAT, 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 for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim.

The tenant applied for an order to cancel the notice to end tenancy and for an order directing the landlord to comply with the *Act*. The tenant also applied for authorization to change locks and to restrict the landlord's right to enter.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The applications of both parties were initially heard on September 30, 2014. The tenant did not attend the hearing and upon receiving the decision, applied for a review hearing. The tenant's application was successful and the original decision and orders were suspended pending the outcome of the review hearing which is scheduled for this date November 19, 2014.

At the start of the hearing, the tenant informed me that he had moved out on September 11, 2014. Since the tenancy has ended, the landlord no longer needs an order of possession. Also for the same reason the tenant's application to cancel the notice to end tenancy and for other remedies is moot.

Therefore, this hearing only dealt with the landlord's monetary claim for unpaid rent, the filing fee and to retain the security deposit.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent, the filing fee and to retain the security deposit in partial satisfaction of his monetary claim?

Background and Evidence

The tenancy started on May 11, 2013. Rent was \$311.00 due on the 11th day of each month. Prior to moving in the tenant paid a security deposit of \$155.50.

The landlord stated that the tenant failed to pay rent for August 2014 and on August 12, 2014; the landlord served the tenant with a ten day notice to end tenancy. The tenant testified that he sent a rent cheque on August 14, 2014 by registered mail, to the landlord and filed a copy of the tracking history. The landlord received the package on August 19, 2014 and signed for it. The landlord stated he had not received the package. The tenant agreed that the cheque was not yet cashed.

The tenant testified that on August 22, 2014, he sent his notice to end tenancy effective September 11, 2014 to the landlord, by registered mail. The package was returned to the tenant as unclaimed by the landlord.

The tenant stated that he moved out on September 11, 2014 and returned the keys by slipping them under the door. The landlord stated that he found out that the tenant had moved out on September 28, 2014.

The landlord is claiming rent for September 11 to October 11, 2014. A new tenant moved into the unit on October 19, 2014.

Analysis

Based on the tracking history filed into evidence by the tenant, I find that the landlord has received rent that was due on August 11, 2014 by registered mail in the form of a cheque. Since the landlord already has a cheque in his possession, I dismiss his application for rent for the period of August 11, 2014 to September 11, 2014.

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 find that the tenant gave notice to end the tenancy by registered mail on August 22, 2014. Since rent is due on the 11th of each month, by giving notice at the end of August, the earliest date that the tenant could legally end the tenancy was October 11, 2014. Therefore I find that the tenant did not give the landlord adequate notice to end the tenancy, thereby causing the landlord to suffer a loss of income for the period of September 11 to October 11, 2014. Accordingly, I find that the landlord is entitled to \$311.00, which is the loss that he suffered.

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

I find that the landlord has established a claim of \$311.00 for loss of income plus \$50.00 for the filing fee for a total of \$361.00. I order that the landlord retain the security deposit of \$155.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance of \$205.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$205.50**.

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 19, 2014

Residential Tenancy Branch

