



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This is an application filed by the landlord for an order of possession and a monetary order for unpaid rent, 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. The tenant confirmed receiving the landlord's notice of hearing package and the submitted documentary evidence. The tenant also confirmed that no documentary evidence was submitted by the tenant. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence of the landlord, I am satisfied that both parties have been properly served.

At the outset the landlord clarified that the tenant had vacated the rental unit and that possession was no longer an issue. The tenant confirmed that he had vacated the rental unit. As such, no further action is required for possession of the rental.

At the end of the hearing the tenant provided a new mailing address as he no longer resides at the rental. As such, the Residential Tenancy Branch File shall be updated to reflect the tenant's confirmed new mailing address.

Issue(s) to be Decided

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

Background and Evidence

This tenancy began on September 1, 2014 on a month to month basis as shown by the landlord's submitted copy of the signed tenancy agreement dated September 11, 2014. The monthly rent was \$1,300.00 payable on the 1st of each month and a security deposit of \$650.00 was paid on September 11, 2014.

The landlord states that the tenant was served with a 10 day notice to end tenancy issued for unpaid rent dated November 18, 2014 in person on the same date. The notice states that the tenant failed to pay rent of \$1,300.00 that was due on November 1, 2014 and displays an effective end of tenancy date of November 28, 2014.

The tenant disputes receiving any 10 day notice to end tenancy dated November 18, 2014. The tenant states that on November 18, 2014 he called the landlord via telephone and gave verbal notice to vacate the rental unit. The tenant states that he vacated the rental unit on November 18, 2014. The landlord disputes this stating that he has no such record of notice and that the tenant vacated the rental unit on December 19, 2014 as the notice of a dispute resolution hearing was sent on December 5, 2014 to the tenant at the rental unit and that it was received by the tenant on December 19, 2014. The tenant confirmed that he went back to the rental unit and received the Canada Post Notice and picked up the Notice of Hearing Package on December 19, 2014. The landlord states that in any event proper 1 month notice was not received from the tenant. The landlord states that he immediately began trying to re-rent the rental.

The landlord states that as he was able to re-rent the unit as of January 2015, the landlord is now seeking unpaid rent for November 2014 of \$1,300.00 as per the 10 day notice dated November 28, 2014 and the loss of rental income for December 2014 of \$1,300.00 as he was not able to re-rent the unit until January 2015. The tenant disputes the claims made by the landlord stating that he "did not pay rent" for November 2014 as he was in dispute over issues regarding the condition of the rental unit.

Analysis

Section 26 of the Residential Tenancy Act states,

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. Although the tenant has disputed the claims of the landlord, the tenant has acknowledged that he refused to pay November rent of \$1,300.00 to the landlord over issues with the condition of the rental unit and that no rent was paid for November. The

tenant has not provided any evidence of an order from the Residential Tenancy Branch authorizing the tenant to withhold rent.

The tenant has also stated that no 10 day notice to end tenancy dated November 28, 2014 was served upon him. I find on a balance of probabilities that it is unlikely that the landlord would not seek an end to the tenancy and restitution of unpaid rent. On this issue, I find that the landlord has properly served the tenant with a 10 day notice to end tenancy dated November 28, 2014 in person on November 18, 2014 as stated by the landlord in his direct testimony.

Section 45 of the Residential Tenancy Act states,

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the Residential Tenancy Act states,

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

The Tenant has acknowledged failing to pay rent of \$1,300.00 for November 2014 rent and as such, I find that the landlord has established a claim for unpaid rent of \$1,300.00 for November rent arrears.

As for the landlord's claim for unpaid rent/loss of rental income of \$1,300.00 for December 2014, I find that the tenant has failed to provide proper written notice to end the tenancy via a 1 month notice to vacate the tenancy. Section 45 and 52 of the Act speaks to what is required. The tenant stated in his direct testimony that notice was given verbally over the telephone on November 18, 2014 and confirmed by the tenant's spouse, D.T. In any event, the Act states that notice to vacate must be provided in writing, be signed, dated and provide the effective end of tenancy date. The tenant has failed provide any of this. I find that the landlord has established grounds for loss of rent/rental income of \$1,300.00 for December 2014.

The landlord has established a total monetary claim of \$2,600.00. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$650.00 security deposit in partial satisfaction of the claim and I grant a monetary order for the balance due of \$2,000.00 under section 67 of the Act. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$2,000.00.
The landlord may retain the \$650.00 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: January 06, 2015

Residential Tenancy Branch

