



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

Introduction

This review hearing was scheduled to consider the Landlord's application under section 55 for an order of possession and under section 67 for a monetary order for unpaid rent. Pursuant to a Review Consideration Decision dated April 21, 2015, a previous monetary order for the Landlord dated December 11, 2015 was suspended pending the outcome of this review hearing.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. At the outset of the Hearing the Landlord confirmed that no order of possession was required.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent for November 2014?

Background and Evidence

The tenancy started on May 15, 2014 on a fixed term to end May 15, 2015. Rent of \$1,250.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$625.00 as a security deposit. The tenancy has ended and the Landlord still holds the security deposit. The Tenant has not made an application for its return.

The Landlord states that in October 2014 the Tenant asked them to hold her post-dated cheque for November 2014 rent until November 8, 2014 when she would have funds for the cheque to clear. The Landlord states that on November 15, 2014 the Tenant told the Landlord they could deposit the cheque. The Landlord states that this cheque was then returned as the Tenant had put a stop payment on the cheque. The Landlord states that on December 8, 2014 the unit was

checked and the Tenant had moved out. The Landlord states that the Tenant did not return the keys until late December 2014. The Landlord claims unpaid rent for November 2015.

The Tenant states that in October 2014 the Parties agreed to “dissolve” the tenancy agreement for the unit and that the Tenant would move into another suite of the Landlord. The Tenant states that the Landlord agreed that the Tenant could find either a roommate to share the unit or that the Tenant could find another tenant to take over the unit. The Tenant states that the rent for November 2014 was to be based on the amount of time that the Tenant remained in the unit until a new tenant was found. The Tenant states that a new tenant was found for in early November 2014 and that on November 14, 2014 the Tenant collected a security deposit of \$625.00. The Tenant states that when she and the new tenant met with the Landlord on November 15, 2014 the Landlord took over dealings with the new tenant and agreements were made with the new tenant on the rent and that the Landlord told the new tenant that they could move into the unit immediately. The Tenant states that the Landlord also then informed the Tenant that she could not move into the Landlord's other suite. The Tenant states she was very upset by the Landlord's refusal to allow her to move into their other suite, that she returned the security deposit to the new tenant and that she moved out of the unit on November 25, 2015. The Tenant states that she stopped the November 2014 rent cheque as she felt that the tenancy agreement had ended in October 2014 and that the new agreement was only to pay for a portion of November 2014 rent that would be based on the move-in date of the new tenant.

The Landlord states that the new tenant emailed them on November 30, 2014 asking when the move-in date would occur. The Landlord states that on December 11, 2014 the new tenant signed a tenancy agreement with the Landlord and moved into the unit on December 17, 2014.

Analysis

Section 26 of the Act provides that 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. A written agreement may not be changed by oral agreement.

As the tenancy agreement was in writing, I find that the terms in relation to the payment of the rent did not change by any oral agreement. The Tenant's evidence of a sublet agreement with the Landlord indicates that there was an agreement that the Tenant would pay prorated rent for November 2014 until a new tenant was found. Regardless of whether the Landlord took over the sublet arrangements, the Tenant remained in the unit and owes rent for November 2014. The dispute the Tenant may have in relation to the refusal of the Landlord to rent another suite to the Tenant is not relevant to the current claim of the Landlord for unpaid rent. Given the terms of the tenancy agreement and based on the undisputed evidence that the Tenant paid no rent for November 2014, I find that the Landlord is entitled to rent of **\$1,250.00**. As the Landlord still holds the security deposit, I deduct this amount of **\$625.00** plus zero interest from the entitlement leaving **\$625.00** owed by the Tenant.

As the previous monetary order was suspended pending the outcome of this review hearing and considering that a different amount for a monetary order has been determined in this review hearing, I set aside the suspended order and replace it with the current order issued under this Decision.

Conclusion

I Order the Landlord to retain the security deposit of \$625.00 plus interest in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$625.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: June 11, 2015

Residential Tenancy Branch

