



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on for:

1. An Order cancelling a notice to end tenancy – Section 49;
2. An Order to recover the filing fee for this application - Section 72; and
3. Other.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation – Section 67;
4. AN Order to retain the security deposit – Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters

At the outset the Parties confirmed that the Tenant moved out of the unit and the Landlord has possession of the unit. As such the Tenant’s claim to cancel is notice to end tenancy is dismissed and the Landlord’s claim for an order of possession is dismissed.

Under “Details of the Dispute” the Tenant’s application indicates that the Tenant is seeking orders requiring detailed accounting from the Landlord in relation to the Landlord’s claims for utility costs that the Tenant is disputing and an order that the Landlord comply with a verbal agreement. During the Hearing the Landlord confirmed that they were no longer seeking those costs and are only seeking the rent. As the tenancy has ended and no costs from during the tenancy will arise, I find that this claim no longer requires any determination.

The Details also includes a claim for the return of the security deposit. As the tenancy has not yet ended when this claim was made, I dismiss this claim with leave to reapply.

Section 59 of the Act provides that an application must provide full particulars of the dispute. Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that a claim is limited to what is stated in the application. As the Tenant’s application does not indicate any monetary amount being sought I dismiss the claim for compensation for moving costs. As nothing in the Tenant’s application that has gone forward I decline to award recovery of the filing fee and the application is in effect dismissed.

Issue(s) to be Decided

Is the Landlord entitled to its claim for unpaid rent and lost rental income?

Background and Evidence

The following are undisputed facts: The tenancy started on May 1, 2015 for a fixed term to August 31, 2015. At the end of the term the Tenant was required to move out of the unit. Rent of \$480.00 was payable monthly on the first day of the month. At the outset of the tenancy the Landlord collected \$240.00 as a security deposit. On July 5, 2015 the Tenant received a 10 day notice to end tenancy for unpaid rent. The Tenant disputed the notice within the time required. The Tenant did not pay Jul 2015 rent and moved out of the unit on July 18, 2015.

The Tenant states that he was in the hospital when rent became due and that he could not pay rent for July 2015 because the Landlord was also asking for payment on utilities and would not provide any accounting. The Tenant states that his funding body requires him to provide receipts or invoices before it will provide the funds to the Tenant. The Tenant states that he moved out of the unit to be in accordance with the notice to end tenancy. The Tenant argues that he should therefore not owe any rent.

The Landlord states that the unit was advertised online starting July 15, 2015. The Landlord states that the unit was advertised for August 1, 2015 occupancy at the same rental rate but that a new tenant was not found until September 1, 2015. The Landlord claims rent for July, August and September 2015.

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. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results.

Based on the undisputed evidence that rent was not paid for July 2015, considering that the Tenant did move out in July 2015 in accordance with the Landlord's notice, and given that the unit was rented for September 2015, I find that the Landlord has only substantiated unpaid rent of \$480.00. As the Landlord's application has had merit I find that the Landlord is entitled to recovery of the \$50.00 filing fee for a total entitlement of \$530.00. Deducting the security deposit of \$240.00 plus zero interest leaves \$290.00 owed by the Tenant to the Landlord.

Conclusion

The Tenant's application is dismissed.

I Order the Landlord to retain the security deposit plus interest of **\$240.00** in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$290.00**. 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: September 17, 2015

Residential Tenancy Branch

