



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for an order for possession and a monetary order for unpaid rent. The hearing was conducted by conference call. The landlord and the named tenant called in and participated in the hearing. At the hearing I was advised that the tenants moved out of the rental unit on August 15, 2015 and the tenancy has ended. There is no longer any basis for the landlord's application for an order for possession and this portion of the landlord's claim is dismissed.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and if so, in what amount?
Is the landlord entitled to retain the security deposit?

Background and Evidence

The rental unit is a house in Surrey. The landlord submitted a copy of a 10 day Notice to End Tenancy, but he did not submit any other documents related to the tenancy. The landlord testified that there was a written tenancy agreement, but he did not provide a copy. He said the agreement had "expired". The landlord could not say when the tenancy began. He said it was more than a year ago. The monthly rent was \$1,250.00 and the tenants paid a security deposit of \$625.00 at the start of the tenancy.

According to the landlord, the tenants owe \$9,700.00 in unpaid rent. The only documentary evidence supplied by the landlord to support his claim was a form of 10 day Notice to End Tenancy for unpaid rent. The Notice to End Tenancy was dated June 30, 2015. The Notice contained a handwritten statement at the top, it said:

Present Rent 7200.00 Pass Bal: 2500.00

The Notice said that the tenants failed to pay rent in the amount of \$9,700.00 for: "JAN, FEB, MAR, APR, JUNE plus previous pass balance + July rent.

The landlord said that he received rent payments in cash from the tenants. He did not provide receipts. He testified that he has kept track of the payments and has it written down. He did not submit any written records and did not have documents with him during the hearing. He said that he could: "send them" later.

The tenant testified that he has paid rent in cash and has not received receipts from the landlord. He said the tenancy began in August, 2012 and the rent was \$1,250.00 per month. The tenant acknowledged that he owed the landlord \$2,500.00 for what he called "past rent". He said that he lost his job, then acquired new employment, but ended up going back to school for further training. The tenant said he negotiated an agreement with the landlord whereby he would pay the past rent plus a further \$2,800.00 and move out of the rental unit by August 1st. The tenant did not agree with the landlords' claim that he owed \$9,700.00 in rent. He did agree that he owed \$5,300.00 in rent, inclusive of his security deposit.

The 10 day Notice to End Tenancy supplied by the landlord contained handwritten notations on the back page. They had been crossed out, and were only partly legible, but appeared to be the draft of a proposed agreement whereby the tenant would pay the landlord a sum of money and move out of the rental unit.

Analysis

The evidence presented, including the testimony of the parties established that there was a tenancy agreement and the monthly rent was \$1,250.00. I accept that a security deposit of \$625.00 was paid at the start of the tenancy. Apart from an annotated Notice to End Tenancy, the landlord has not provided any ledgers, receipts or financial records to establish what rent payments have been made by the tenants and what amounts are outstanding. The rent was paid in cash. The landlord did not provide receipts, although the *Residential Tenancy Act* requires that a landlord must provide a tenant with a receipt for rent paid in cash.

The landlord has the burden of proving his entitlement to a monetary award in the amount claimed; he must provide sufficient evidence to establish his claim on a balance of probabilities. I find that, in the absence of ledgers, account books or copies of receipts, the landlord has failed to prove that he is entitled to a monetary award in the amount claimed. At the hearing the tenant acknowledged that he does owe rent to the landlord. He acknowledged that he owes past rent of \$2,500.00 and further

acknowledged that he owes current rent of \$2,800.00 after applying the security deposit to the outstanding balance.

The landlord has failed to provide sufficient evidence to prove, on a balance of probabilities, that the tenants owe the landlord the amount claimed, namely: the sum of \$9,700.00 as back rent. Based on the admissions of the tenant, however, I am satisfied that the tenants are indebted to the landlord for unpaid rent in the amount of \$5,300.00 after applying the tenants security deposit to the unpaid balance and I find that the landlord is entitled to a monetary award in the said amount.

Conclusion

The landlord is entitled to retain the tenants' security deposit of \$625.00 and is entitled to a further monetary award in the amount of \$5,300.00. The landlord is entitled to recover the \$100.00 filing fee for this application for a total award of \$5,400.00 and I grant the landlord an order under section 67 in the said amount. This order may be registered 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 18, 2015

Residential Tenancy Branch

