



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, as well as an agent for the landlord who also interpreted the landlord's affirmed testimony, and testified himself. The landlord's agent is the son-in-law of the landlord and was also accompanied by his spouse, who observed only and did not take part in the proceedings.

Despite being personally served with the Landlord's Application for Dispute Resolution and notice of this hearing, no one for the tenant attended the hearing. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participants who joined the call were the landlord and the landlord's agent. The landlord testified under affirmation that the hearing package was personally served upon the tenant by the landlord on September 12, 2015 at the rental unit, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing the landlord's agent advised that the tenant has vacated the rental unit, and the application for an Order of Possession is withdrawn.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began about 6 years ago, and the tenant moved out of the rental unit on October 3, 2015. Rent in the amount of \$700.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one of 2 suites in the lower level of the landlord's home and the landlord resides in the upper unit.

The landlord's agent further testified that the tenant failed to pay rent when it was due on September 1, 2015 and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. The notice is dated September 2, 2015 and contains an effective date of vacancy of September 10, 2015 for unpaid rent in the amount of \$700.00 that was due on September 1, 2015. A Proof of Service document has also been provided which is witnessed by another party, which states that the notice was served September 2, 2015 by posting it to the door of the rental unit. The landlord has not collected any rent since the notice was issued, and the tenant has not served the landlord with an application for dispute resolution disputing the notice or the unpaid rent. The tenant left without any conversation with the landlord, and has not provided the landlord with a forwarding address. The landlord seeks to keep the security deposit.

A tenant in the second rental unit of the landlord's home expressed interest in renting the rental unit, and will be occupying it commencing November 1, 2015. The landlord advertised a unit for rent by placing a sign in the window sometime after October 4, 2015 and advertising on Craigslist, a free internet advertising website, and the second rental unit will be tenanted on November 1, 2015 as well; a new tenant has been secured but must give notice to his or her current landlord and cannot move in until November 1, 2015.

The landlord seeks loss of rental revenue for the month of October, 2015 in the amount of \$700.00, as well as unpaid rent for September, 2015 in the amount of \$700.00, recovery of the \$50.00 filing fee, and an order permitting the landlord to keep the security deposit in partial satisfaction of the claim.

Analysis

I have reviewed the evidentiary material of the landlord and I am satisfied in the undisputed testimony of the landlord's agent that the tenant failed to pay rent in the amount of \$700.00 for the month of September, 2015.

With respect to the landlord's claim for loss of rental revenue, I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the Proof of Service document provided by the landlord, and I am satisfied that the tenant moved out as a result of that notice. Any

notice that the tenant could have given to the landlord at any time after September 1, 2015, the date rent was payable and not paid, would not take effect until the end of October, 2015 in any event since rent is payable on the 1st day of each month. The landlord has found a new tenant to take over the rental unit for November 1, 2015 and considering the undisputed fact that the tenant moved out on October 3, 2015, I find that the landlord is entitled to recovery of that loss of rental revenue.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$50.00 filing fee.

The landlord has not received a forwarding address from the tenant, and has not made an application for dispute resolution claiming the security deposit, and having found that the tenant was properly served with notice of this hearing, I hereby amend the application to include an application that the landlord retain the security deposit. I order the landlord to keep the \$350.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord for the difference in the total amount of \$1,100.00.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed as withdrawn.

I hereby order the landlord to keep the \$350.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,100.00.

This order is final and binding and may be enforced.

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: October 23, 2015

Residential Tenancy Branch

