



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, CNR, OLC, 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 August 10, 2015 for:

1. An Order cancelling a notice to end tenancy - Section 46; and
2. An Order compelling the Landlord to comply with the Act - Section 62.

The Landlord applied on August 14 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 Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the hearing the Parties mutually agreed to end the tenancy on or before 1:00 p.m. on October 31, 2015.

Section 63 of the Act is set out as follows:

- (1) The director may assist the parties, or offer the parties an opportunity, to settle their dispute.
- (2) If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or order.

Given the mutual agreement to end the tenancy reached during the Hearing, I find that the Parties have settled the dispute over the end of the tenancy. In order to give effect to the agreement I provide the Landlord with an order of possession effective October 31, 2015.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on May 1, 2015. Rent of \$900.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit. The tenancy agreement does not set out the Landlord's address for service.

The Landlord states that its address was not provided to the Tenant as the Landlord did not know that it was supposed to provide it to the Tenant and because the Landlord became concerned about the Tenant during the tenancy. The Landlord states that the Landlord would make arrangements by text to pick up rent on a mutually agreeable day and time. The Landlord states that the Tenants paid rent in cash and that the Landlord gave receipts for each payment. The Landlord provided copies of receipts as evidence for May and June 2015 rent payments.

The Landlord states that the Tenant was texted a few days in advance of July 2015 and arrangements were made for the Landlord to collect the rent on June 30, 2015. The Landlord states that when the Landlord attended the unit at around 2:00 p.m. the Tenant asked for more time as the Tenant was upset about personal matters. The Landlord states that she agreed to give the Tenant more time and did not contact the Tenant again until mid-July 2015 when the Landlord went to the unit without notice to ask for the rent. The Landlord states that no rent was paid then and none has been paid since. The Landlord states that she no longer has any copies of her text communications with the Tenant and provides copies of written communications with the Tenant dated August 1 and 2, 2015

The Tenant states that July 2015 rent was paid to the Landlord in cash on either June 30 or July 1 or 2, 2015. The Tenant states that the exact date cannot be recalled and states that rent was withdrawn from their account on June 30, 2015 and that some cash was on hand. The Tenant

states that the Landlord did not provide a receipt for the July rent payment as was her usual practice. The Tenant states that the Landlord never provided any receipts for the cash rent paid for May and June 2015. The Tenant states that the rent for June 2015 was not paid on May 30, 2015 as indicated by the Landlord's receipt evidence but on May 31, 2015. The Tenant states that the Landlord refused to accept rent for August, September and October 2015 but that the Tenant is willing to pay this immediately.

The Tenant states that the Landlord has entered the unit without right but has not done so since the date of the Tenant's application. The Tenant was seeking an order that the Landlord not enter the unit without following the requirements under the Act for such entry. The Landlord agrees not to enter the unit while the tenancy is ongoing without following the requirements of the Act.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. In assessing whether rent was paid for July 2015, I note that while the Landlord provided documentation of communication with the Tenant in August 2015 about late August rent and several other issues, none of these communications mention anything about unpaid July 2015 rent. The Landlord's evidence in relation to the unavailable text communications for the July rent did not hold a ring of truth. I note the Landlord's repeated refusal to provide its address to the Tenant and the discrepancy in the payment of June 2015 rent (May 31, 2015) and the date of the receipt for that payment (May 30, 2015). If a receipt was provided, I find it more likely was not provided at the time of the receipt of rent. Overall I tend to prefer the Tenant's evidence and I find therefore that the Landlord has failed on a balance of probabilities to substantiate unpaid rent for July 2015.

Given the undisputed evidence that no rent was paid for August and September 2015 I find that the Landlord has substantiated an entitlement to rent for August, September and October 2015 in the amount of **\$2,700.00**. As the Landlord has not been fully successful with its application I decline to award the Landlord with recovery of the filing fee. Deducting the **\$450.00** security deposit plus zero interest leaves **\$2,250.00** owed to the Landlord.

As the Landlord has agreed to comply with the Act in relation to entry into the rental unit, I dismiss the Tenant's claim with leave to reapply for compensation should the landlord fail to act as agreed.

Conclusion

The matter of the possession of the unit and the Landlord's entry into the unit has been resolved by agreement.

I **Grant** the Landlord an order of possession effective 1:00 p.m. on October 31, 2015.

I **Order** the Landlord to retain the security deposit plus interest of \$450.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$2,250.00**. 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: October 19, 2015

Residential Tenancy Branch

