



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, CNR, MNR, MNDC, OLC, FF

Introduction

This hearing dealt with applications by the landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and a monetary order for unpaid rent, loss of income, postage and the filing fee.

The tenant applied to cancel the notice to end tenancy and for a monetary order for compensation pursuant to a notice to end tenancy for landlord's use of property. The tenant also applied for the recovery of the filing fee and for an order directing the landlord to comply with the *Act*.

Both parties attended the hearing and were given full opportunity to present evidence, make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

At the start of the hearing, the parties informed me that the tenant had moved out on August 01, 2016. Since the tenant has moved out, the landlord no longer requires an order of possession. In addition, the portions of the tenant's application to cancel the notice to end tenancy and for the landlord to comply with the *Act* are moot. Therefore, this hearing only dealt with the monetary claims of both parties.

Issues to be decided

Is the landlord entitled to a monetary order to recover unpaid rent, loss of income, postage and the filing fee? Is the tenant entitled to her monetary claim for compensation and for the filing fee?

Background and Evidence

The tenancy started on May 15, 2015 for a fixed term of one year. At the end of the fixed term the tenancy would continue on a month to month basis. The monthly rent was \$1,500.00 due on the fifteenth of the month. Prior to moving in, the tenant paid a security deposit of \$750.00.

The tenant testified that on May 14, 2016, the landlord visited the tenant and provided her with a new fixed term lease that would end July 15, 2016 along with a letter explaining that if the tenant chose not to sign the lease, the landlord would consider this refusal as a month's notice to end the tenancy effective June 15, 2016. The tenant also stated that the landlord indicated that she was interested in selling the rental property

The tenant agreed that she withheld rent for the period of June 15 to July 15, 2016 and had paid rent late on two occasions. The landlord served the tenant with notices to end tenancy for cause and for unpaid rent on May 16 and June 16 respectively. However despite the tenant's testimony regarding the landlord's intentions to sell the property, the tenant agreed that the landlord did not serve her with a notice to end tenancy for landlord's use of property.

The landlord has applied for rent for the period of June 15 to August 15, 2016, mailing costs and the filing fee. The tenant has applied for compensation pursuant to a s. 49 notice to end tenancy for landlord's use of property and for the recovery of the filing fee.

Attempts were made to resolve all disputes with regard to this tenancy including the return/retention of the security deposit, but were unsuccessful. The landlord understood that she would have to make another application for damages including loss of income and to retain the security deposit pursuant to s.38.

Analysis

Landlord's application:

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. The tenant agreed that she did not pay rent that was due on June 15, 2016 and July 15, 2016. However the tenant moved out on August 01, 2016. The landlord is applying for loss of income for the period of August 01-15, 2016, but stated that he has not yet started looking for a new tenant.

I find that the landlord is entitled to rent for the period of June 15 to August 01, 2016 in the amount of \$2,250.00. The landlord is at liberty to apply for loss of income in her application for damages at which time she will have the opportunity to demonstrate her efforts to find a new tenant.

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the landlord's claim for the cost of mailing is dismissed. The landlord has proven a portion of her claim and accordingly I award the landlord the recovery of the filing fee of \$100.00.

Overall the landlord has established a claim for unpaid rent (\$2,250.00) and for the filing fee (\$100.00) for a total of \$2,350.00.

Tenant's application:

Based on the documents filed into evidence and the testimony of both parties, I find that the tenancy was a fixed term tenancy which would continue on a month to month basis at the end of the fixed term. Despite this, the landlord insisted on entering into another fixed term of two months after the original term ended. I find that the letter served to the tenant was inappropriate and not in compliance with the terms of the tenancy agreement. Even though the tenant was in a month to month tenancy, the letter forced the tenant to sign a new two month tenancy agreement or move out.

The tenant agreed that she was not served a notice to end tenancy under s.49 for landlord's use of property and therefore she is not entitled to compensation that would flow from the service of notice such as this. Even though the tenant has not proven her case, I find that she was compelled to file an application for dispute resolution upon receipt of the letter dated May 14, 2016. Therefore I award the tenant the filing fee.

The landlord has established a claim of \$2,350.00 and the tenant has established a claim for \$100.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$2,250.00 which consists of difference in the established entitlements of both parties. I grant the landlord a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$2,250.00**.

The tenant's application is dismissed.

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: August 04, 2016

Residential Tenancy Branch

