



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SINGLA HOMES (2005) LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the corporate Landlord for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to recover the filing fee from the Tenant.

An agent for the Landlord, the property manager, and the Tenant appeared for the hearing and provided affirmed testimony. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Preliminary Issues

The Tenant confirmed that he had received the Landlord’s Application and the Landlord’s documentary evidence. The Landlord’s agent denied receipt of the Tenant’s documentary evidence. The Tenant testified that he had served the Landlord his evidence by email prior to the hearing but that had not received a response to it.

The Act does not allow for evidence to be served by email. In addition, the Tenant failed to provide sufficient evidence to show that the Landlord had received the evidence by email. As a result, I informed the parties that I would not be considering the Tenant’s documentary evidence. However, I allowed the Tenant to refer to it in oral testimony.

At the onset of the hearing, the parties confirmed that the Tenant had vacated the rental unit and that the Landlord had received vacant possession of the rental unit. Therefore, the Landlord’s agent withdrew the request for an Order of Possession. The hearing continued to hear the parties’ evidence in relation to the Landlord’s monetary claim for unpaid rent.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The parties agreed that this tenancy started on May 1, 2014 on a month to month basis. The parties agreed that at the time the tenancy ended the Tenant was responsible for paying \$1,000.00 in rent on the first day of each month. The Tenant paid the Landlord a \$470.00 security deposit at the start of the tenancy which the Landlord still retains.

The parties agreed that the Tenant had been served with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") on July 30, 2016. The Landlord did not provide a copy of the 2 Month Notice but agreed that an unsigned copy was served to the Tenant on that date.

The Landlord's agent testified that the Tenant failed to pay rent for August 2016 in the amount of \$1,000.00. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on August 11, 2016. The Tenant agreed that he had not paid rent for August 2016 because according to the second page of the 2 Month Notice, he had authority to not pay his last month's rent as he was seeking to move out of the rental unit by the end of August 2016. The Tenant confirmed that he had not provided any written notice to the Landlord to vacate the rental unit earlier than the vacancy date on the 2 Month Notice dated September 30, 2016.

The Tenant testified that he had vacated the rental unit in the middle of September 15, 2016 and had provided the keys to the rental unit to another agent of the Landlord before the 2 Month Notice vacancy date of September 30, 2016. The Landlord's agent stated that they did not receive vacant possession of the rental unit until October 9, 2016 but that they had re-issued a signed 2 Month Notice with a vacancy date of October 31, 2016 by regular mail. The Tenant disputed this stating that he had only been served with the unsigned 2 Month Notice dated July 30, 2016 and that he moved out pursuant to the vacancy date on it.

The Landlord had not provided any evidence to support the service or issuing of a second 2 Month Notice for this hearing. However, the Landlord's agent agreed that for the purposes of this hearing and pursuant to the amount that had been claimed on the Application, they were only seeking unpaid rent for August and September 2016 and

acknowledged that this amount would have to take into account the compensation payable to the Tenant under the 2 Month Notice.

The Tenant stated that his understanding of the 2 Month Notice was that he could deduct his last month's rent which he had intended to be August 2016 as he was seeking to move out earlier. However, the Tenant now understood that the meaning of last month's rent pursuant to the 2 Month Notice, related to withholding September 2016 rent as he had not given any written notice to the Landlord to vacate earlier. The parties then agreed that the Tenant was in rental arrears for August 2016 rent and that pursuant to the compensation payable to the Tenant under the 2 Month Notice, the amount outstanding the Tenant was responsible for was \$1,000.00 for August 2016 rent.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement unless the tenant has a right to withhold or deduct rent. In this case, the Tenant would have had authority under the 2 Month Notice dated July 30, 2016 and under Section 51 of the Act to have withheld September 2016 rent. The Tenant was still obligated to pay rent for August 2016 as he had not provided any written notice to the Landlord to vacate earlier than the vacancy date of September 30, 2016. In addition, the evidence before me suggests that the tenancy ended on September 30, 2016 pursuant to the 2 Month Notice dated July 30, 2016.

Therefore, I find the Landlords are entitled to \$1,000.00 in unpaid rent for August 2016. As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,100.00.

Section 72(2) (b) allows me to offset any amounts awarded to the landlord from a tenant's security deposit. Therefore, as the Landlord already holds \$470.00 in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded. As a result, the Landlord is issued with a Monetary Order for the remaining balance of \$630.00. Copies of this order are attached to the Landlord's copy of this Decision. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment in accordance with the Landlord's written instructions.

Conclusion

The Landlord's agent withdrew the request for an Order of Possession as the tenancy has ended. The Tenant failed to pay required rent for August 2016. Therefore, the Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the remaining amount of \$630.00 which includes the filing fee. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act

Dated: October 31, 2016

Residential Tenancy Branch