



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR MNDC

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent and loss pursuant to section 67;

Tenant:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- cancellation of the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use of Property (the 2 Month Notice) pursuant to section 49; plus
- Various other remedies under the Act.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord testified that on August 25, 2017, his wife personally served the tenant with his Amended Application for Dispute Resolution. This hearing had originally been scheduled in response to the tenant’s application. The landlord subsequently made an application through Direct Request which was adjourned to a participatory hearing and scheduled to be heard at the same time as the tenant’s application.

The landlord advised the tenant vacated the rental unit on September 9, 2017 so he is withdrawing his application for an order of possession.

In the absence of the applicant tenant's participation in this hearing, I order the tenant's application dismissed in its entirety without leave to reapply.

Issues

Is the landlord entitled to a monetary award for unpaid rent and loss?

Background and Evidence

The tenancy began on January 1, 2016 with a monthly rent of \$775.00 payable on the 1st day of each month. The tenant paid a security deposit of \$350.00 at the start of the tenancy which the landlord continues to hold.

The landlord's monetary claim as per the application was for outstanding rent for August, September and October 2017 in the amount of \$2325.00. In the hearing, the landlord reduced this claim to only August and 1/2 month's rent for September as the tenant vacated on September 9, 2017. The landlord testified his mother has moved into the rental unit as of September 15, 2017. The landlord is also claiming an additional rent of \$300.00 per month for a 9 month period during which the tenant had an additional occupant in the rental unit.

Analysis

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the tenant was obligated to pay monthly rent in the amount of \$775.00 but failed to pay rent for August 2017 and for September 2017. I accept the landlord's claim for outstanding rent of \$775.00 for August 2017 and ½ month's rent of \$387.50 for September 2017 for a total of \$1162.50.

The landlord's claim for rent for an additional occupant is dismissed as the tenancy agreement contained no provision for additional rent for additional occupants.

The landlord continues to hold a security deposit of \$350.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of

section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$812.50.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$812.50. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: November 03, 2017

Residential Tenancy Branch