



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities. The landlord was successful in obtaining both orders via the Direct Request Process, and the tenant was successful with an application for review of that Decision. This is the Review Hearing.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. No issues with respect to service or delivery of evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing the parties agreed that the tenant has moved out of the rental unit.

Issue(s) to be Decided

Should the Decision and orders of the director be confirmed, varied or set aside?

Background and Evidence

The landlord testified that this month-to-month tenancy began on November 1, 2014 and the tenant moved out of the rental unit on October 9, 2017. Rent in the amount of \$660.00 per month was originally payable under the tenancy agreement on the 1st day of each month, which was raised each year and was set at \$710.00 per month before the end of the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$330.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the upper level was also tenanted. A copy of the tenancy agreement has been provided as evidence.

The landlord further testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities personally by the landlord on September 2, 2017. A copy has been provided for this hearing and it is dated September 2, 2017 and contains an effective date of vacancy of September 12, 2017 for unpaid rent in the amount of \$710.00 that was due on September 1, 2017.

On October 4, 2017 another manager went to pick up rent for October and asked the tenant to also pay for September, but the tenant didn't pay any rent so another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served. A copy has not been provided for this hearing, however the landlord testified that it was dated October 4, 2017 and contained an expected date of vacancy of October 14, 2017 for unpaid rent in the amount of \$1,420.00 that was due on October 1, 2017.

On October 9, 2017 the tenant called the landlord wanting a meeting, so the landlord met with the tenant and asked the tenant for the rent, but the tenant didn't pay and served the landlord with documents for this Review Hearing, and told the landlord she had already moved out.

The landlord started to advertise the rental unit on Craigslist on October 30, 2017 and was successful in finding a suitable tenant for November 1, 2017.

The tenant testified that the landlord did not serve the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but served the tenant with an Order of Possession giving the tenant 2 days notice to move out, and told the tenant that September's rent had not been paid.

Usually, the landlord would arrive at the rental unit to pick up rent, but never on the first of the month. Some receipts that the tenant has are for two months at a time.

The tenant also testified that the landlord has been fraudulent with respect to his claim that he served the tenant with the notice to end the tenancy in September, 2017, and has caused the tenant stress and grief. In October, 2017 the landlord's friend arrived to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and the tenant moved out. The tenant moved out and should not have to pay rent for October. It is clear to the tenant that the landlord wanted the tenant to move out for some other reason.

Analysis

The *Residential Tenancy Act* specifies that following a Review Hearing, I may confirm, vary or set aside the original order.

Having heard from the parties, I am not convinced that the landlord ever served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in September, 2017. If that were the case, the landlord would not have served another one in October. Further, the landlord was successful in obtaining the Order of Possession and a monetary order by way of a Direct Request process, which is a process without an oral hearing, and there was no testimony by either party that the landlord ever served the Notice of Direct Request documents as required by the *Residential Tenancy Act*. Therefore, I set aside the Order of Possession.

The tenant agrees that the rent for September was not paid, and the tenant feels that due to the stress caused by the landlord and the fraudulent claim made by the landlord, no rent should be paid for October, 2017. The *Residential Tenancy Act* does not permit me to make any orders to punish a landlord or a tenant, and specifies that a tenant must pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement. The tenant moved out in October, 2017, and I find that the landlord is owed \$1,420.00 for September and October's rent. Therefore, I vary the original order to include both months.

The landlord currently holds a security deposit of \$330.00 in trust. The tenant must provide the landlord with a forwarding address in writing, and the landlord will then have 15 days to return it or apply for dispute resolution to claim against it.

Conclusion

For the reasons set out above, I hereby set aside the original Order of Possession.

I hereby vary the original monetary order to \$1,420.00, and I grant that order in favour of the landlord.

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: December 14, 2017

Residential Tenancy Branch