



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

On August 22, 2017, the landlord filed an Application for Dispute Resolution by Direct Request. On August 19, 2017 the Adjudicator granted the landlord an order of possession and a monetary order for unpaid rent for July 2017 and August 2017.

On September 5, 2017, the tenant made an application for review consideration, which was granted on the basis of fraud. The Arbitrator ordered the parties to participate in a new hearing, and the original decision was suspended. The Arbitrator at the new hearing may confirm, vary or set aside the original decision.

This new hearing dealt with an Application for Dispute Resolution by landlord for an order of possession and a monetary order for unpaid rent.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

Preliminary and procedural matter

In this case the parties were at a dispute resolution hearing on September 21, 2017 and a decision was made on September 22, 2017. The Arbitrator at that hearing determined that there was no need to consider either party's respective application based on a Two Month Notice to End Tenancy as they had determined that the tenancy legally ended on the basis of a 10 Day Notice to End Tenancy for Unpaid Rent.

Therefore, as the tenancy has ended, I find it not necessary to consider the landlord's application for an order of possession.

Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on December 7, 2013. Rent in the amount of \$850.00 was payable on the first of each month. A security deposit of \$425.00 was paid by the tenant.

The landlord testified that the tenant was served with a Two Month Notice to End Tenancy that was effective for July 31, 2017. However, the tenant disputed the Two Month Notice and it never had any force or effect.

The landlord testified that they did not cash the rent cheque for July 2017, as that was going to be the tenant's compensation for receiving the Two Month Notice as the tenancy was to end on July 31, 2017.

The landlord testified that the tenant did not vacate on July 31, 2017, and were required to pay them rent for August 2017, and any details of the rent would be between the landlord and the new purchaser. The landlord stated the tenant did not pay the rent for August 2017, even after served the tenant was served with a 10 Day Notice to End Tenancy for Unpaid rent. The landlord seeks to recover unpaid rent for July and August 2017, in the amount of \$1,700.00

The tenant testified that they paid the landlord rent for July 2017, by cheque and the landlord did not cash that cheque as it was for compensation for receiving the Two Month Notice.

The tenant testified that they paid the new owner rent for August 2017, rent; however, the owner returned the cheque to them as they did not want to be involved with their tenancy dispute. The tenant acknowledged they did not issue or pay the landlord August rent after they received the notice to end tenancy for unpaid rent.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

In this case, the landlord did not cash the tenant's rent cheque for July 2017, as that was to be their compensation for the tenant receiving the Two Month Notice to End Tenancy. However, the tenant's did not vacate the rental unit.

However, when August 2017, rent became due and owing the tenant issued a cheque to new purchaser of the property. The new purchaser returned the cheque to the tenant as they sought vacant possession of the property and has no intention of becoming their landlord. I find the new purchaser had the right not to accept the rent as they wanted vacant possession of the property.

The tenant's landlord served the tenant with a 10 Day Notice for Unpaid Rent. The tenant did not issue their landlord a cheque for August 2017. I find the tenant breached the Act, when they failed to issue a new cheque to the landlord for August 2017. The tenant was fully aware the purchaser was not accepting rent as their landlord.

Further, as the tenancy ended based on the 10 Day Notice to End Tenancy for Unpaid prior to the tenant's application to cancel the Two Month Notice being heard on September 21, 2017. I find the Two Month Notice to End Tenancy for Landlord's Use of Property had no force or effect as the tenancy had already ended.

As the tenant was living in the rental unit for July 2017, August 2017 and a portion of September 2017, I find the landlord is entitled to recover rent for July 2017 and August 2017, in the total amount of **\$1,700.00**.

I find that the landlord has established a total monetary claim of **\$1,800.00** comprised of unpaid rent July and August 2017 and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$425.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$1,375.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The original decision and order made on August 29, 2017, are set aside and replaced with this decision and order.

The landlord is granted a monetary order and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 20, 2017

Residential Tenancy Branch