



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes: MNR OPR FF

Introduction:

This hearing was convened as a result of a Review Consideration Decision dated August 17, 2018 which granted a Review Hearing of a Decision dated August 9, 2018. The original hearing was based on the landlord's application made via the Direct Request Proceeding process. This was an ex parte process in which the landlord sought an Order of Possession and Monetary Order based on unpaid rent. The Decision was issued based on written submissions from the landlord only.

The tenant applied for Review Consideration and was granted a Review Hearing which found the tenant was not available to get the registered mail Notice of the Hearing until after the date of the hearing so was unable to submit evidence as she was unaware of the process. **The Review Consideration limited the Review Hearing to the matter of total rent owing** and suspended the portion of the original Decision relating only to the sum of rent owed pursuant to section 81(3) of the *Residential Tenancy Act* (the Act). The portion of the Decision related to the 10 Day Notice to end Tenancy and the Order of Possession were confirmed pursuant to section 82(3) of the Act.

Both parties attended this Review hearing and gave sworn testimony.

Issue(s) to be Decided:

Is the landlord entitled to the monetary order for rental arrears and to recover the filing fee for this application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The tenant said she moved into the unit in July 2012 and the rent was \$1200. Then it was raised to \$1300 on February 2017 and she has been paying that in two equal amounts every month. She provided proof of interac

transfers for two monthly payments of \$650 for several months. She maintains the rent continued to be \$1300 a month and not \$1500 as the landlord claims.

The landlord said the rent was \$1500 a month and a tenancy agreement was signed by the tenant agreeing to this amount. The tenant said the landlord needed this to obtain mortgage financing but he had a private arrangement with her that the rent would remain at \$1300 a month. She says the lease has expired. The landlord denies this and points to a loan agreement that he made in October 2011 with the tenant wherein she agreed she owed him \$7600 for a loan he had given her at 8% interest. He is unsure of how much rent she owes him now as she has not been paying the \$1500 a month rent as she agreed on her lease. As additional proof of payment problems, he provided a note signed by the tenant saying she agreed to pay him \$1400 for March 2013 rent over a three month period. He also provided copies of emails regarding the tenant promising to pay the remainder owing from April and May 2015 by January 11, 2017 which she states was her next pay day. In the emails, the tenant asks to go back to two payments a month on February 2018 and the landlord replies that she has to move out as she is not paying full rent according to the contract and never paid on time.

Analysis:

Order of Possession:

The Order of Possession was confirmed in the Review Consideration so is not in issue in this hearing.

Monetary Order for Unpaid Rent:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the weight of the evidence is that rent was \$1500 a month. A lease was signed by both parties on December 22, 2015 for a one year term to December 31, 2016 stating rent was \$1500 a month. Although the tenant contended it had expired, I find the lease clearly states it continues on a month to month basis and is initialed by both parties. I find the tenant paid \$1300 towards her rent in July 2018 but after the 5 days allowed to cancel the Notice to End Tenancy but she never paid the further \$200 owed for July 2018. Although the tenant claimed she had a private agreement with the landlord to pay only \$1300 a month, I find insufficient evidence to support her claim. While she provided evidence of paying only \$1300 a month for several months by interac, I find the landlord's evidence granting her a loan in 2011 and his email pointing out she will have to move as she is not paying the full amount of the rent rebuts her claim that he agreed to a private arrangement with her to pay less rent. A written document signed by her also states she agrees to pay the landlord \$1400 for March 2013 rent.

Although the tenant may owe further rent, I find insufficient evidence of the amount owing, other than the \$200 proved in the original hearing. I find the landlord has made some written agreements with the tenant concerning payment of arrears but he provided insufficient evidence to support additional amounts owed. He supplied no copies of a rental account showing payments and amounts owed. Therefore, I find insufficient evidence that he is entitled to more than the \$200 of unpaid rent plus the \$100 filing fee awarded in the original Decision.

Conclusion:

Pursuant to section 82(3) of the Act, I hereby **confirm** the Decision and Orders dated August 9, 2018. The Decision and Orders are in full force and effect.

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: September 06, 2018

Residential Tenancy Branch