



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, OPR, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent, for a Monetary Order for unpaid rent, for monetary compensation, and for the recovery of the filing fee paid for this application.

Two family members of the Landlord (the “Landlord”) were present for the teleconference hearing, along with an agent. The Tenant and a family member were also present. The family member of the Tenant named on this dispute presented testimony on behalf of the Tenant.

The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package by registered mail, along with copies of the Landlord’s evidence. The Tenant did not submit any documentary evidence prior to the hearing.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The parties confirmed that an Order of Possession dated November 6, 2018 was issued through a previous hearing and that the Tenants moved out in November 2018. As such, the Landlord is no longer seeking an Order of Possession. The Application for Dispute Resolution was amended pursuant to Section 64(3)(c) of the *Act* to remove the Landlord's claim for an Order of Possession.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to monetary compensation?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord presented testimony that they purchased the home with the rental unit in mid-August 2018 with the Tenants already residing in the rental unit. Monthly rent was \$1,000.00 and the Landlord received a security deposit of \$375.00 from the previous home owners.

The Tenant stated that their tenancy began on April 6, 2015 and they paid rent on the first day of each month. They moved out on November 8, 2018, following service of the Order of Possession. The Landlord stated that they were unaware of the exact day that the Tenants moved out.

The Landlord is seeking \$2,000.00 compensation in rent for the months of October and November 2018, as well as \$1,000.00 for lost rental income for December 2018. The Landlord provided testimony that they were able to secure new tenants for the rental unit in December 2018 for a higher monthly rent than the previous Tenants were paying.

The Tenant submitted that on November 6, 2018 he paid the Landlord \$2,000.00 in cash as rent for October and November 2018. He stated that receipts for rent paid in cash were never provided, including on November 6, 2018 when he paid rent for October and November 2018.

The Tenant stated that at the time the rent was paid, the Landlord told him that they would cancel the dispute resolution hearing regarding the unpaid rent. However, as the Tenant did not receive notification that the hearing was cancelled, he stated that he called into the teleconference hearing just in case.

The Tenant also testified that he did not believe he owed \$1,000.00 in rent for October and November due to the Landlords taking over use of the third bedroom beginning on September 13, 2018. He stated that they lost use of the third bedroom from September 13, 2018 until they moved out on November 8, 2018.

When the Tenants first rented the suite, they paid \$750.00 for two bedrooms, so the Tenant stated his belief that this is what he should have paid for those months the bedroom was not able to be used by them. However, he testified that he paid an amount of \$2,000.00 for October and November 2018 rent.

The Landlord stated that they did not receive any payments towards rent owing for October or November 2018 and that rent in the amount of \$2,000.00 remains outstanding. The Landlord agreed that rent receipts for cash payments were never provided.

The Landlord testified that there was never an agreement to reduce the rent to \$750.00 for the Landlord's use of the third bedroom, and as no rent was paid for October or November 2018 as due, they are owed \$2,000.00 in rent for these months.

The Landlord submitted into evidence the 10 Day Notice, registered mail tracking information regarding service of documents, and an authorization form for the Landlord's agent in attendance at the hearing.

Analysis

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

The Landlord is seeking compensation for loss of rental income in December 2018 in the amount of \$1,000.00.

Section 7(1) of the *Act* states the following:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

However, as the Landlord stated that they were able to rent the unit for December 2018 for more than \$1,000.00 in monthly rent, I find that they did not experience a loss of rental income. Therefore, I decline to award the Landlord compensation of \$1,000.00 for December 2018 rent.

As for the Landlord's claim of unpaid rent in the amount of \$2,000.00 for October and November 2018, the parties provided conflicting testimony on whether the rent was still outstanding. The Tenant stated that \$2,000.00 was paid on November 6, 2018, while the Landlord stated that no amount has been paid towards the rent owing.

As stated in rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, in this matter the Landlord bears the burden of proof.

When two parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient documentary evidence to establish their claim.

While neither party submitted sufficient evidence to establish whether rent for October and November 2018 had been paid or not, I find that the Landlord's practice of not providing rent receipts does not help the matter. In accordance with Section 26(2) of the *Act*, a landlord must provide receipts for rent paid in cash.

In the absence of sufficient evidence to establish whether rent is outstanding for October and November 2018 as claimed by the Landlord, I am not satisfied that there remains an amount of outstanding rent for these months. Therefore, I find that the Landlord did not meet the burden of proof to establish his claim that rent is due in the amount of \$2,000.00 and I decline to award this amount to the Landlord.

As the Landlord was not successful in their application, I decline to award the recovery of the filing fee. The Landlord's application is dismissed, without leave to reapply.

Conclusion

The Landlord's Application for Dispute Resolution is dismissed, without leave to reapply.

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 05, 2018

Residential Tenancy Branch