



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for an order of possession, for a monetary order for unpaid rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

This matter commenced by way of the Direct Request Process. The adjudicator determined that this matter should be adjourned to a participatory hearing.

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.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary and procedural matters

During the adjournment period the landlord amended their claim by adding a claim for damages. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes. In these circumstances, I find the issue of damages is not related to an order of possession or unpaid rent. I will, therefore, only consider the landlord’s request for an order of possession and unpaid rent. The balance of the landlord’s amended application is dismissed with leave to reapply.

At the outset of the hearing the parties agreed that the tenant vacated the premise on September 1, 2019, and an order of possession is no longer required.

The parties further agreed that the tenant gave the landlord permission to retain the security deposit for unpaid rent for July 2019.

Issue to be Decided

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

Background and Evidence

The parties agreed that the tenancy began on May 29, 2019. Rent in the amount of \$3,200.00 was payable on the first of each month. The tenant paid a security deposit of \$1,600.00. The tenancy ended on September 1, 2019.

The landlord testified that the parties agreed to mutually end the tenancy effective July 31, 2019. The landlord stated that the tenant did not vacate the premise on the agreed upon date and as a result the new renters could not move in to the premises and later had to find alternate housing.

The landlord testified that it was not until August 31, 2019, that they found out that the tenant was moving, as this was reported by the neighbor. The landlord testified that because the tenant did not give them enough notice that they were moving on September 1, 2019; that they were unable to rent the premise for September 2019. The landlord seeks to recover unpaid rent for September 2019.

The tenant acknowledged that they signed a mutual agreement to end the tenancy effective July 31, 2019. The tenant stated that they had found new accommodation; however, the new landlord decided not to rent to them and they had not entered into a tenancy agreement.

The tenant testified that because of that they were unable to find new rental accommodations they did not vacate the premise on July 31, 2019. The tenant stated that they continued to look for new rental accommodation; however, they did not notify the landlord until the new accommodation were secured, so they would not be in the same position that occurred in July 2019. The tenant stated that they notified the landlord sometime during the last week of August that they were vacating.

The landlord argued that it was a neighbor that contacted them and informed them that the tenant was vacating. The landlord stated that they contact the tenant and it was only after that conversation that the tenant gave them notice that they would be vacating.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, the parties agreed that they entered into a mutual agreement to end the tenancy effective July 31, 2019. The tenant did not vacate the premise until September 1, 2019.

While I accept the tenant was having difficulties finding housing; the tenant should have ensured that they had alternated secured housing before they mutually agreed to end the tenancy.

I find the tenant breached the Act, when they failed to vacate the premise on the date they mutually agreed. I find the tenancy legally ended on July 31, 2019, and the tenant was overholding the rental unit.

The evidence of the landlord was that the new renters were unable to move into the premises on August 1, 2019, and eventually had to find alternate accommodations.

Since the tenant failed to comply with the Act by not vacating the premise on July 31, 2019, the landlord was in the position that they could not look for potential renters until the tenant moved out of the premise or received an order of possession, which is one of the issues that were originally before me.

The tenant did not vacate the rental unit until September 1, 2019, giving the landlord no ability to mitigate the loss of rent for September 2019.

I find the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the Act. This includes compensating the landlord for any loss of rent. I find that the landlord is entitled to recover unpaid rent for September 2019, in the amount of \$3,200.00

I find that the landlord has established a total monetary claim of **\$3,300.00** comprised of the above described amount and the \$100.00 fee paid for this application.

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 landlord is granted a monetary order for unpaid rent. The balance of the landlord's application is dismissed with 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: September 20, 2019

Residential Tenancy Branch