



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC, OPC, MNDC, MNR, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application to cancel a notice to end tenancy for cause and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution. The landlord has made an Application for Dispute resolution, in which the landlord has requested an Order of possession, for money owed for unpaid rent, money owed for compensation or loss and to recover filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Preliminary Matter

The tenant had a witness present prepared to testify. The witness was excused from the hearing, to be called back when required by the tenant. The tenant declined to call his witness.

The tenant withdrew his Application for Dispute Resolution as he has moved out of the rental unit. The landlord withdrew the portion of her application requesting an Order of possession as the tenant has now moved.

During the hearing the landlord testified that she had made an Application for Dispute Resolution claiming loss of rent revenue. The landlord testified that she is going to make a further application for dispute resolution claiming damages to the rental unit. As the landlord has not included her claim for damages to the rental unit with this application I find that it is reasonable to dismiss with leave to reapply the landlord's



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

claim for loss of rent revenue. The landlord is at liberty to make a further application for dispute resolution claiming damages.

Issues to be Decided

Is the landlord entitled to unpaid rent for September 2009?

Is the landlord entitled to loss of rent revenue for October 2009?

Is the landlord entitled to filing fee costs?

Background and Evidence

This tenancy commenced on September 1, 2005, rent was \$2,795.00 per month, a \$1,250.00 deposit was paid on September 31, 2005.

During the hearing the tenant agreed that he paid \$1,500.00 rent in September and that the landlord is entitled to retain his deposit in satisfaction of the balance owed, in the sum of \$1,245.00.

The parties agreed that the landlord issued the tenant a notice to end tenancy for unpaid rent on September 2, 2009. The tenant stated that at the end of August he emailed the landlord giving his notice to end the tenancy on September 31, 2009. The landlord provided email communication as evidence and stated that she did not receive the notice to end tenancy until September 2, 2009. The landlord stated that her email account had been switched to a different provider but that she did continue to receive her email. The landlord stated that the tenant did not email his notice to end tenancy on August 31, 2009 and that he sent her a copy of a August 31, 2009 email on September 1, 2009, as an attachment. On September 2, 2009 the landlord responded to the tenant indicating that she had not read his email as she had cancelled her internet connection effective August 18, 2009. The landlord provided evidence of past email communication with the tenant.

The landlord testified that the tenant had not provided her with a key to the rental unit and that the strata had changed the keys earlier this year. The landlord stated that the tenant did not give her a new key until September 9, 2009. The tenant testified that it was not his responsibility to provide the landlord with a key to the rental unit and that she had a responsibility to communicate with the president of the strata in order to obtain a new key. The tenant testified that new locks were installed in June, 2009.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

The landlord stated that she showed the rental unit to prospective tenants on four occasions during September but that the rental unit was not suitable for showings; at which point she ceased showing the unit.

Analysis

The tenant has agreed that the landlord is owed the balance of September rent in the sum of \$1,245.00 and I find that the landlord may retain this amount from the \$1294.27 deposit plus interest the landlord is holding in trust.

I find that the landlord had responsibility to obtain new keys from the president of the strata and that her attempts to obtain a key from the tenant were misplaced as the tenant was not responsible for changing the locks.

I find that the landlord was sent an email on August 31, 2009 from the tenant providing notice ending his tenancy on September 31, 2009. I base this decision on the landlord's evidence which indicates that she had severed her email account in mid-August. I also find that the parties had previously communicated by email and that the tenant had reason to expect the landlord would receive this communication.

Conclusion

I find that the Landlord has established a total monetary claim of \$1,295.00 comprised of the balance of September rent owed and the \$50.00 fee paid for this application. I order that the Landlord retain the deposit and interest of \$1,294.27 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of .73 cents. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord's claim for loss of rent revenue 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: October 28, 2009.

Dispute Resolution Officer