

DECISION

Dispute Codes CNR, MNDC, FF, O, OPR, OPC, OPB, MNR, MND

Introduction

There are applications filed by both parties. The Tenant has filed an application to cancel a notice to end tenancy for unpaid rent, a monetary order request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee. The Landlord has made an application for an order of possession resulting from unpaid rent or utilities, an order of possession resulting from cause and the Tenant has breached an agreement with the Landlord, a monetary order request for damage to the unit, site or property, for unpaid rent or utilities and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

At the beginning of the hearing both parties came to a mutual agreement to end the tenancy on July 8, 2011 at 7:00 a.m. Both parties would meet at the rental unit at the agreed time and the Tenant would return 1 key and 1 garage door opener to the Landlord. As both parties have come to a mutual agreement over possession, the merits of both parties on this issue were not considered. An order of possession is granted to the Landlord by mutual agreement.

The Tenant stated at the beginning of the hearing that he was seeking the return of an overpayment of rent. The Tenant's previous Co-Tenant vacated the rental unit and the Tenant felt that he was not responsible for the Co-Tenant's portion of the rent of \$750.00.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for over-payment of the rent?

Is the Landlord entitled to a monetary order for unpaid rent, unpaid utilities and loss of January rental income?

Background and Evidence

This tenancy began on February 1, 2011 on a fixed term tenancy until July 31, 2011. The monthly rent is \$1,800.00 per month payable on the 1st of each month.

Both parties have been part of two separate tenancy agreements involving additional co-tenants. The previous tenancy began in August of 2010 and ended in December 2010. Both parties agree that there is no signed tenancy agreement for the previous tenancy. The Tenant claims that the Landlord requested and received a security deposit equal to 1 month's rent of \$1,900.00. The Landlord disputes this stating that the tenancy agreement was for a \$950.00 security deposit and a \$950.00 pet damage deposit as the unsigned copy shows a clause for pets. The Tenant's previous co-tenant moved out and the Landlord states that he returned that co-tenant's portion of the security deposit of \$950.00. The Tenant disputes that he was forced to sign the tenancy with both sets of co-tenants that were not known to him. The Landlord disputes this stating that he did sign and enter into the agreement. The Tenant has provided no proof that he was forced to sign the tenancy agreement.

A security deposit of \$1,900.00 was paid as shown in the current signed tenancy agreement submitted by both parties.

The Tenant is claiming \$83.00 for fees incurred twice during an automatic banking deduction that he incurred because the Landlord failed to cancel the banking deduction. The Landlord has conceded this issue and has stated that he is responsible for this cost.

The Landlord states that the Tenant failed to pay rent for June and July of \$1,100.00 each for a total of \$2,200.00. The Tenant has conceded that he did not pay the June or July rent and that he was withholding it for this dispute. The Tenant stated that he did not have an order from the Residential Tenancy Branch or consent from the Landlord allowing him to withhold the rent.

The Landlord is also seeking \$1,320.00 in late rent charges for the months of August 2010 until December 31, 2010. The Landlord refers to section 17 of the signed tenancy agreement allowing for \$15.00 a day late rent charge. The Landlord is also seeking

\$510.00 in late rent charges for the month of June 2011, citing the same section of the tenancy agreement.

The Landlord has made a claim for \$750.00 for the loss of rental income. The Landlord states that the co-tenant, S.C. vacated the unit in January and the Landlord was only able to re-rent the unit on February 1, 2011. The Landlord stated that he tried to immediately re-rent the unit when he discovered that the co-tenant moved out. The Tenant disputes this stating that he should not be responsible for his co-tenant.

The Landlord is seeking \$195.30 in unpaid utilities for the months January to March of 2011. The Tenant has made no comments on this issue, but simply states that he is disputing this claim.

The Landlord is also seeking to claim \$270.91 for utilities from the previous tenancy owing. The Tenant disputes this, but has not provided any comments or details.

The Landlord has withdrawn his claim for a pet damage deposit of \$1,900.00.

Analysis

Based upon the submitted evidence and direct testimony of both parties, I am satisfied that both have been properly served with the notice of hearing, evidence and the Landlord's notice to end tenancy documents. Both parties have confirmed receiving the other party's documents.

Section 26 of the Residential Tenancy Act states,

Rules about payment and non-payment of rent

- 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant has conceded that he withheld the rent payments for June and July totalling, \$2,200.00 which is contrary to the Act. I am satisfied that the Landlord has established his claim for unpaid rent of \$2,200.00.

The Landlord's claim of late rent charges totalling, \$1,820.00 relies on section 17 of the signed tenancy agreement. This section requires the Tenant to pay \$15.00 per day for any rent received after the due date. I find this charge in contravention of section 7 (1) (d) and subsection (2) of the Residential Tenancy Regulations. This section states, "subject to subsection (2), an administration fee or not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Subsection (2) states, A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee. As such, I dismiss this portion of the Landlord's claim. The Landlord's agreement is contrary to the Act and is unenforceable.

I dismiss the Tenant's application for a monetary order for \$750.00. The "overpayment" referred to by the Tenant is monthly rent that he and his co-tenant are responsible for. Both Tenant's entered into a tenancy together with the Landlord and as such, both are responsible.

I am satisfied based upon the evidence provided by both parties that the Landlord is entitled to the loss of rental income (unpaid rent) of \$750.00. Co-Tenant's are responsible for the timely payment of the monthly rent.

As the Landlord has conceded the cost of \$83.00 that the Tenant is claiming for NSF charges incurred because of the Landlord's automatic withdrawals, I am satisfied that the Tenant has established a claim for this amount.

I prefer the evidence of the Landlord over that of the Tenant and as such the Landlord has also established a claim for the unpaid utilities. The Tenant's share of the unpaid utilities of \$195.30 and \$270.91 totalling, \$466.21 has been established.

The Landlord has established a total claim of \$3,416.20. I order that the Landlord retain the complete \$1,900.00 security deposit from this current co-tenancy in partial satisfaction of the claim. As both parties have been successful in their applications, I decline from ordering any award for the recovery of each filing fee. I grant the Landlord a monetary order under section 67 for the balance due of \$1,516.20. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted an order of possession by mutual agreement for July 8, 2011 at 7:00 a.m.

The Landlord is granted a monetary order for \$1,516.20.

The Landlord may retain the \$1,900.00 security deposit.

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: July 05, 2011.

Residential Tenancy Branch