



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent and recovery of the filing fee. Both parties participated in the conference call hearing and gave affirmed testimony.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This tenancy began December 24, 2005 with weekly rent of \$175.00, the tenants did not pay a security deposit.

The landlord testified that the tenants were continually behind in paying their rent and when the tenants vacated the rental unit October 1, 2010 they owed the landlord rent in the amount of \$2225.00. The landlord stated that the tenants had promised to return and pay the rent owed to the landlord but that the landlord has not seen the tenants since they left in October 2010.

The tenant testified that they were not behind in their rent and that when they moved in they had made an agreement with the landlord ML to pay monthly rent of \$700.00 and that the tenants could pay their rent bi-weekly at a rate of \$35.00. The tenant claimed that she had told the landlord when they went to look at the rental unit that they would not pay a weekly rate and would only pay a monthly rate. The tenant stated that the landlord is now trying to add on extra days at the end of each month and say the tenants owe more money when in fact the tenants have paid all the rent in full.

The landlord refuted the tenants claim that they had an agreement to pay a monthly rent of \$700.00 and referred to his copy of the Guest Registry that notes a weekly rate of \$175.00. The tenant stated that the Guest Registry also notes the tenants making bi-weekly payments of \$350.00 that the tenant claims the landlord agreed to.

The tenant stated that the landlord ML once said to her *'I don't know why you're behind because you make your payment every two weeks'* and the tenant insists that this is more evidence that the rent was monthly and paid in full. The landlord MH directly refuted the tenants comment and claimed to never have made such a statement to the tenant.

The tenant also referred to a receipt entered into evidence by the landlord where the tenants paid \$700.00. The landlord stated that they may have paid \$700.00 but the receipt notes the rent was to cover June 5 to July 2, 2010.

The landlord confirmed that at no time in the tenancy were the tenants ever issued a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord in this application is seeking \$2225.00 in unpaid rent.

Both parties were very argumentative during the hearing and often directly dismissed each other's testimony as being untrue.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has not met the burden of proving that they have grounds for entitlement to a monetary order for unpaid rent.

I am not satisfied that there was not a verbal agreement for the tenants to pay \$700.00 per month and make bi-weekly \$350.00 payments as the landlord's Guest Register clearly shows the tenants in fact did make bi-weekly \$350.00 payments. The receipt for \$700.00 covers what could be argued as a month's rent or a weekly rate and is therefore inconclusive in determining whether the rate was in fact monthly or weekly.

The landlord has also not provided and accurate accounting as to how the sum of \$2225.00 was reached as when calculating out the monthly rent versus the weekly rate for the duration of the tenancy the amount due is significantly different that the amount the landlord is now claiming as unpaid throughout the duration of the tenancy.

With no clear establishment of the facts through either the evidence or testimony regarding how rent was to be paid made, I find it is not reasonable to enforce this claim of unpaid rent.

The landlord's application is hereby dismissed in its entirety without leave to reapply.

As the landlord has not been successful in their application the landlord is not entitled to recovery of the \$50.00 filing fee.

Conclusion

The landlord's application 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: August 25, 2011.

Residential Tenancy Branch