



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, LAT, OPC, OPR, MNR, MNDC, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to cancel a 1 Month Notice to End Tenancy; for orders suspending the landlord's right to enter the rental unit; and, authorization to change the locks. The landlord applied for an Order of Possession for cause and unpaid rent; and, a Monetary Order for unpaid rent. Despite serving each other with their respective hearing documents the tenant did not appear at the hearing.

The property owner was represented by an agent and his sister who stated she has a Power of Attorney for her brother. The owner's sister confirmed that the person appearing as an agent for the owner was authorized to act as an agent with respect to this tenancy. In the absence of evidence to the contrary, I accepted that the agent was/is acting on behalf of the owner with respect to this tenancy and, as such, the agent meets the definition of landlord under the Act. I refer to the owner's agent named on the tenancy agreement and in the Applications for Dispute Resolution as "landlord" and I have referred to the owner's sister as an agent in the remainder of this decision.

The landlord and the agent stated the tenant vacated the rental unit September 12, 2013. As such, an Order of Possession was no longer required. I also found the remedies sought by the tenant to be moot and dismissed his application.

The landlord and agent requested that the landlord's Application for Dispute Resolution be amended to obtain authorization to retain the tenant's security deposit in satisfaction of the rent owed for September 2013. As the request for amendment was actually a reduction in the amount claimed, I found the request non-prejudicial to the tenant and amended the landlord's Application for Dispute Resolution accordingly.

Issue(s) to be Decided

Is the landlord authorized to retain the security deposit in satisfaction of unpaid rent?

Background and Evidence

The month-to-month tenancy commenced August 1, 2013 for a monthly rent of \$500.00 due on the 1st day of every month. The tenant initially paid a security deposit of \$500.00 but the landlord refunded \$250.00 upon learning of the error. The landlord continues to hold a security deposit of \$250.00.

The tenant was given a 1 Month Notice to End Tenancy for Cause on August 18, 2013 with a stated effective date of September 30, 2013. The tenant filed to dispute the 1 Month Notice but did not pay the rent that was due on September 1, 2013. On September 4, 2013 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. After giving the tenant the 10 Day Notice the tenant did not pay the outstanding rent. Rather, the tenant vacated the rental unit on September 12, 2013.

The landlord seeks authorization to retain the tenant's security deposit of \$250.00 in satisfaction of rent owed to the landlord.

Analysis

Under the Act a tenant is required to pay rent in accordance with their tenancy agreement, even if the landlord violates the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent.

Upon review of the tenancy agreement and other evidence provided to me I find the tenant was obligated to pay rent of \$500.00 on September 1, 2013. I find I was provided no evidence to indicate the tenant had a legal right to withhold rent that was due to the landlord on September 1, 2013. Accordingly, I find it was the tenant's failure to pay rent, in violation of the tenancy agreement and the Act, that resulted in an early end to this tenancy.

In light of the above, I find the landlord entitled to recover rent for the month of September 2013 from the tenant. In keeping with the landlord's request, I authorize the landlord to retain the tenant's \$250.00 security deposit in full satisfaction of the rent owed by the tenant.

Conclusion

The tenant's application has been dismissed. The landlord has been authorized to retain the tenant's security deposit in satisfaction of rent owed by the tenant.

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 08, 2013

Residential Tenancy Branch

