



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: CNR, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking to cancel a Ten Day Notice to End Tenancy for Unpaid Rent. The hearing was also convened to deal with an application by the landlord seeking an Order of Possession and a monetary order for rental arrears and loss of revenue.

This matter was set for hearing by telephone conference call at 9:00 a.m. on this date. And the only participant who called into the hearing was the respondent landlord. Despite being served in person with the Notice of Hearing documents, the tenant did not appear.

The landlord stated that the tenant vacated the unit on September 15, 2014 without leaving any forwarding address and the landlord has already regained possession. Therefore the tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent is moot and will not be heard.

Only the landlord's claim for unpaid rent and loss of revenue will be heard.

Issue to be decided

- Is the landlord entitled to an order of possession for unpaid rent and compensation for loss of revenue?

Background and Evidence

The landlord testified that no security deposit is being held on behalf of the tenant as the tenant used these funds to pay rent in the past.

The landlord testified that the tenant failed to pay \$860.00 rent for August 2014 and a Ten Day Notice to End Tenancy for Unpaid Rent was served on the tenant on August 7, 2014 in person. The landlord testified that the tenant failed to pay \$860.00 rent due on September 1, 2014 and moved out on September 15, 2014 without leaving any forwarding address.

In evidence was a copy of the Ten Day Notice to End Tenancy for Unpaid Rent dated August 7, 2014. No copy of the tenancy agreement is in evidence.

In addition to rent owed, the landlord's application indicates that the landlord is claiming \$860.00 for loss of revenue for the month of October 2014. The landlord stated that the tenant left damage to the unit.

Analysis:

In regard to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. If the tenant does not pay rent when it is due, the landlord can issue a Notice to End Tenancy for Unpaid Rent under section 46 of the Act. I find that the Notice was properly issued and served and that the tenant owed rent for August in the amount of \$860.00 and \$860.00 for September 2014. I find that the landlord is entitled to compensation for rental arrears of \$1,720.00 for October rent.

In regard to the landlord's claim for \$860.00 compensation for loss of revenue for the month of October 2014, I find that this is a claim in damages.

In a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test for damages below:

Test For Damage and Loss Claims

- [1] Proof that the damage or loss exists,
- [2] Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
- [3] Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
- [4] Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, I find that the landlord is required to prove the existence and value of the damage or loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I find that the tenant failed to follow the Act by not paying rent. Being that the tenant vacated on September 15, 2014 I find that, However, I find that the landlord's claim for loss of revenue for October does not satisfy all elements of the test for damages. No

evidence was submitted to verify that the landlord met element 4 of the test by actively marketing the unit to minimize the loss. For this reason, I hereby dismiss the portion of the landlord's application seeking compensation for loss of revenue for November 2014.

I find that the landlord is entitled to total compensation of \$1,770.00, comprised of \$860.00 rental arrears for August 2014, \$860.00 rental arrears for September 2014 and the \$50.00 cost of the application.

In regard to the landlord's testimony that the tenant left the unit not cleaned and with some damage, I find that there is no claim for this compensation in the landlord's application. As the parties applied in August prior to the tenant vacating, the landlord is at liberty to make an application to seek compensation for these costs.

I hereby dismiss the tenant's application in its entirety without leave and issue a monetary order in favour of the landlord for \$1,770.00. This Order must be served on the tenant in person or by registered mail. This decision and order is final and binding and may be enforced through Small Claims Court if necessary.

Conclusion

The landlord is partly successful in the application and is granted a monetary order for rent. The tenant's application is dismissed in its entirety without leave.

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, 2014

Residential Tenancy Branch