



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “*Act*”), for a monetary order for unpaid rent, damages or compensation for losses under the *Act*, an order to retain the security deposit and for the return of their filing fee. The matter was set for a conference call.

Both parties attended the conference call hearing and were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

At the outset of the hearing, the parties agreed that the Tenant had moved out of the rental unit and that the Landlord currently has possession of the rental unit.

The Landlord testified that she no longer required an Order of Possession and would like to proceed in this hearing on her monetary claim. The Tenant did not dispute the Landlord’s request.

As the other party to this matter did not dispute the Landlord’s request, I will proceed on the Landlord’s application for a Monetary Order.

Issues to be Decided

- Is the landlord entitled to monetary compensation for unpaid rent and utilities?
- Is the Landlord entitled to a monetary order for damages or compensation under the *Act*?
- Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The parties agreed that the tenancy began on June 1, 2018, as a month to month tenancy. Rent in the amount of \$2,500.00 was to be paid by the first day of each month and the Landlord had been given a \$1,250.00 security deposit and a \$625.00 pet damage deposit. The Landlords provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that she served the Tenant a Two-Month Notice to End Tenancy for Landlord's Use of the Property (the Two-Month Notice) on July 23, 2018, by posting it to the front door of the rental unit. The Notice has an effective date of September 30, 2018. The Notice informed the Tenant of the right to dispute the Notice within 15 days after receiving it. The Tenant testified that he had not disputed the Notice.

The Landlord testified that the Tenant stopped paying rent as soon as he received the Two-Month Notice. The Landlord testified that she served a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10-Day Notice) on September 7, 2018. The Notice has an effective date of September 17, 2018, and an outstanding rent amount of \$2,500.00 as of September 1, 2018. The Notice informed the Tenant of the right to dispute the Notice within 5 days after receiving it. The Tenant testified that he had not disputed the Notice.

The Landlord testified that the Tenant was passed due for August and September rent as of the date of the 10-Day Notice but that she had only put \$2,500.00 on the 10-Day Notice as she owed the Tenant the equivalent of one month's rent under the Two-Month Notice she had previously issued.

The Tenant testified that he moved out of the rental unit at the beginning of October 2018 and that he believed he moved out in accordance with the Two-Month Notice.

The Landlord testified that the Tenant had not told her he would be leaving in accordance with the Two-Month Notice and that when she attended the property on October 18, 2018, the Tenant still had a pool table in the rental unit.

The Tenant testified that he had moved in a rush and was unable to take the pool table at the time but that he would like to come by and get it. The Tenant testified that he would have gone by the rental unit to pick the pool table before now, but that his tenancy had ended, and he thought it would be trespassing. Both the Tenant and the Landlord agreed in this hearing that the Tenant would contact the Landlord and arrange a time to come by to get the pool table.

The Tenant agreed in this hearing that he owes the Landlord the rent for September 2018 and that the August 2018 rent was his compensation for receiving the Two-Month Notice. The Tenant also agreed that the Landlord could keep his security and pet damage deposits in partial satisfaction of the outstanding rent for September 2018.

The Landlord testified that her family member she had planned on moving in, had to find somewhere else to live as the Tenant over held the rental property, past the date of her Two-Month Notice.

The Landlord also testified that she had hired a property management company to handle re-renting the property for her but that she was out the rent for October 2018. The Landlord is requesting the rent for September and October 2018, as she had been unable to re-rent the rental unit due to the Tenant's pool table still being inside the rental unit.

The Tenant disputed that he should not have to pay rent for the rental unit for October 2018, as the Landlord had issued the Two-Month Notice and was supposed to have a family member move in and that she does not have a loss in rental income for that month. The Tenant also testified that he believed that the Landlord had no intentions of moving in a family member, as per her Two-Month Notice but that she had just issued the Two-Month Notice to get rid of him.

Analysis

Based on the evidence before me, the testimony of both parties, and on a balance of probabilities that:

I accept the agreed upon testimony of the Landlord that the Tenant that the Tenant owes the Landlord \$2,500.00 for the September 2018 rent. I also accept the testimony of the Tenant that the Landlord has his permission to keep his security and pet damage deposits as partial satisfaction of the outstanding rent for September 2018. Therefore, I award the Landlord the outstanding rent for September in the amount of \$625.00, comprised of \$2,500.00 for September 2018 rent, less \$1,250.00 security deposit and \$625.00 pet damage deposit that the Landlord is holding for this tenancy.

As for the Landlord's claim for the loss of rental income October 2018, in the amount of \$2,500.00. I accept the testimony of the Tenant, that he moved out of the rental unit as of the first week of October 2018 and that he had left a few personal items behind when he moved out.

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that the Tenant did breach the *Act* when he over held the rental unit by one week and left a few personal possessions behind. However, I find that the Landlord could not have suffered a loss of rental income for that period as the tenancy had ended in accordance with the Two-Month Notice she had issued, to use the rental unit for her own family. Therefore, I find that the Landlord has not proven that she suffered a loss of rental income due to the Tenant's breach of the *Act*. Consequently, I dismiss the Landlord's claim for \$2,500.00 in lost rental income for October 2018.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in her application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for her application.

Conclusion

I find for the Landlord under sections 67 and 72 of the *Act* and grant the Landlord a **Monetary Order** in the amount of **\$725.00**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: November 5, 2018

Residential Tenancy Branch