



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC CNR OPE OPR OPL MNR MNSD FF O

Introduction

This hearing dealt with an application by the tenant to cancel notices to end tenancy and by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The only notice to end tenancy that the landlord served on the tenant was a 10 day notice to end tenancy for unpaid rent. I therefore did not need to consider the portions of either application regarding any other notices to end tenancy.

Two tenants and the landlord participated in the teleconference hearing.

Issues(s) to be Decided

Is the notice to end tenancy for unpaid rent valid?

Is the landlord entitled to a monetary order for unpaid rent?

Should the tenant be required to pay a pet deposit?

Background and Evidence

The tenant had been an employee of the landlord's fishing company and the landlord would regularly take the rent off the tenant's first paycheque of each month. In approximately August 2009 the tenant quit his fishing job with the landlord's company. In September 2009 the tenant paid the landlord \$550 for rent. On October 5, 2009 the landlord demanded that the tenant sign a written tenancy agreement, and the tenant did

so. The tenancy agreement indicates that the monthly rent is \$550, that the tenant paid a security deposit of \$260 on September 1, 2008, and a pet deposit of \$250 on October 4, 2009. The tenancy agreement is silent regarding the issue of whether the tenant may have pets. On October 6, 2009 the landlord served the tenant with a notice to end tenancy for unpaid rent. The notice indicates that the tenant failed to pay \$800 in rent that was due on October 1, 2009.

The evidence of the landlord was that rent is, as set out in the tenancy agreement, \$550 per month. The tenant only had one dog at the beginning of the tenancy, but he now has three dogs. When the landlord attended at the rental unit it smelled of drugs, smoke and animals. The landlord then decided to require the tenant to pay a pet deposit. The \$800 indicated on the notice to end tenancy represents \$550 for October's rent and \$250 for the pet deposit. The landlord acknowledged that he refused to accept the tenant's attempts to pay \$550 for October's rent because he wanted the full amount including the pet deposit.

The response of the tenant was that he has always had the same three dogs, and the landlord was aware at the outset of the tenancy that the tenant was moving in with those three dogs. The tenant attempted on October 8, 2009 and on October 9, 2009 to pay the landlord the rent of \$550, but the landlord refused to accept it. The tenant acknowledged that he did not pay rent for October or November 2009.

Analysis

I find that the notice to end tenancy for unpaid rent is not valid. The amount of unpaid rent stated on the notice was \$800; however, the landlord confirmed that \$250 of that amount was not for rent but for a pet deposit. A 10 day notice to end tenancy for unpaid rent or utilities may only be issued in regard to unpaid rent or utilities, not in regard to a pet deposit or other monetary claims. I therefore cancel the notice to end tenancy.

The tenant acknowledged that he had not paid rent for October or November 2009, and the landlord is therefore entitled to a monetary order for \$1100, representing \$550 in rent for each of those two months.

In regard to the issue of the pet deposit, I accept the testimony of the tenant as more credible than that of the landlord. The landlord appeared to develop concerns about potential damage by the tenant's dogs and decided at that point to require a pet deposit from the tenant. I accept the tenant's testimony that the landlord was aware at the outset of the tenancy that the tenant had the three dogs in question and did not require the tenant to pay a pet deposit. I find that the landlord waived the requirement for the tenant to pay a pet deposit for those three dogs, and the landlord therefore may not now require the tenant to pay a pet deposit.

I note that if the landlord has concerns regarding potential damage to the rental unit by the tenant or his dogs, he may seek to end the tenancy by serving the tenant with a one month notice to end tenancy for cause. If the tenant or his dogs cause damage to the unit and do not repair the damage at the end of the tenancy, the landlord may apply for monetary compensation for the damage caused.

As the tenant was successful in his application, I find that he is entitled to recovery of his \$50 filing fee. As the landlord's application was only partially successful, I find he is entitled to half of his filing fee in the amount of \$25. I accordingly deduct \$25 from the unpaid rent of \$1100, for a balance of \$1075.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

The landlord has waived his right to require a pet deposit from the tenant in regard to the tenant's three dogs.

I grant the landlord a monetary order under section 67 for the balance due of \$1075. This order may be filed in the Small Claims Court and enforced as an order of that Court.