



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNC, CNR, RP, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on August 8, 2011 for:

1. An Order cancelling a Notice to End Tenancy for Cause – Section 47;
2. An Order cancelling a Notice to End Tenancy for non-payment of rent – Section 46;
3. An Order for the Landlord to make repairs to the unit, site or property - Section 32; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on August 8, 2011 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the Hearing, the Parties confirmed that the Tenant vacated the unit on August 31, 2011 and returned the keys to the Landlord the next day. As a result, the Landlord's application in relation to an order of possession is no longer required as is

the Tenant's application in relation to an order for the repair of the unit and an Order cancelling the Notices.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy of a 3 bedroom upper suite began on April 1, 2011 and ended August 31, 2011. Rent in the amount of \$1,200.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$600.00. The Parties agree that rent for August 2011 remains unpaid. The Parties also agree that utilities remain unpaid however the Parties dispute the amount that is payable to the Landlord. The Landlord states that the Tenant owes the amounts of \$333.00, 83.00 and 106.00 for utilities for the period May 15 to August 15, 2011. The Landlord did not supply receipts or bills for the utilities and the Tenant disputes the amounts owing, does not have copies of all the bills claimed by the Landlord and states that some payments were made on past utilities but no receipts were ever issued by the Landlord for those payments. The Tenant further states that as there are three more suites in the basement, the Landlord has not calculated the amounts to reflect the lower suites consumption and share of the utilities. It is noted that no written tenancy agreement was entered into between the Parties.

Analysis

Given the lack of a written tenancy agreement covering the payment of utilities and the lack of utility bills or invoices setting out the dates and amounts consumed and owing, I find that the Landlord has not substantiated on a balance of probabilities that the Tenants owe the amounts claimed. As a result, I dismiss this part of the Landlord's application.

As the Parties have agreed that August 2011 rent remains unpaid, I find that the Landlord has substantiated this claim and is entitled to a monetary amount of \$1,200.00. The Landlord is also entitled to recovery of the \$50.00 filing fee for a total monetary entitlement of \$1,250.00. The Landlord currently holds a \$600.00 security deposit. I order the Landlord to retain this sum in partial satisfaction of his claim, leaving a balance of **\$650.00** payable by the Tenant to the Landlord and I grant the Landlord a monetary order under section 67 for that sum.

As the Tenant has vacated the unit and the claims made in the application are in relation to an ongoing tenancy, I dismiss the Tenant's application and make no award in relation to recovery of the filing fee.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$600.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$650.00**. If necessary, this order may be filed in the Small Claims 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: September 08, 2011.

Residential Tenancy Branch