



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: CNR RR FF
For the landlord: OPR MND MNR FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenants applied to cancel a notice to end tenancy for unpaid rent; authority to reduce the rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee.

The landlord applied for an order of possession for unpaid rent; a monetary order for damage to the unit, site or property and unpaid rent; and to recover the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

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 start of the hearing, the landlord decided to withdraw the portion of his claim for a monetary order for damage to the unit, site or property. As a result, I dismiss that portion of the landlord’s application with leave to reapply.

Issue(s) to be Decided

- Should the Notice to End Tenancy for Unpaid Rent be cancelled?
- Should the landlord be granted an order of possession?
- Should a monetary order be granted for unpaid rent?
- Should the tenant be allowed to reduce rent for repairs, services or facilities agreed upon but not provided?

- Should either party recover the filing fee?

Background and Evidence

The landlord provided a copy of the signed tenancy agreement as evidence. The tenancy agreement indicates the tenancy was a month to month tenancy. The tenancy agreement was signed on September 30, 2011. Monthly rent in the amount of \$1,100.00 is due on the first day of every month. The tenant paid the landlord a security deposit of \$550.00. The landlord provided a 10 Day Notice to End Tenancy for Unpaid Rent dated May 15, 2012 with an effective date of May 31, 2012.

The landlord testified that the tenant did not pay April 2012 rent in full. The tenant testified that the rent was not paid in full due to an invoice for water filters that the landlord agreed in advance she could deduct from April 2012 rent. The receipt total agreed between the parties was \$268.80. With the receipt deduction from the \$1,100.00 rent, the net amount owing for April 2012 rent is \$831.20. The landlord testified that he received \$800.00 from the tenant and \$31.20 remains owing for April 2012 rent. Both parties agree that the cheque written for April 2012 originally had the wrong year on the cheque which later had to be rectified before it could be cashed.

The landlord stated that the cheque received from the tenant for May 2012 rent bounced. The tenant provided documentary evidence prior to the hearing that explains that the May 2012 NSF cheque was due to a bank error. The tenant issued another cheque for May 2012 which the landlord confirmed he deposited on May 11, 2012.

The landlord testified that he was unsure if February or March 2012 rent was paid on time as he could not recall during the hearing. Both parties agreed that June 2012 rent was paid on time by cheque and that a post-dated cheque had been provided for July 2012 rent.

The tenant did not provide evidence regarding her request in her application to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided, other than referring to a dishwasher which may need servicing. The landlord committed to addressing the dishwasher complaint from the tenant which would be discussed outside of the hearing.

Analysis

The landlord provided a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") dated May 15, 2012 with an effective date of May 31, 2012. The tenant provided documentary evidence indicating that the rent cheque for May 2012 was bounced due to a banking error. The landlord confirms that a new cheque was deposited on May 11, 2012 which is before the issue date of the Notice. Given the above, I find the Landlord has not proven his claim and, therefore, dismiss the landlord's application and cancel

the notice to end tenancy. As the landlord was not successful in his application, I do not grant the recovery of the filing fee.

As the tenant has proven a portion of her claim and I have cancelled the notice to end tenancy, I will grant half of the filing fee. I dismiss the tenant's application to allow a tenant to reduce rent for repairs, services or facilities agreed upon due to lack of evidence.

Conclusion

I find that the landlord has not proven his claim and, therefore, cancel the landlord's notice to end tenancy. As the landlord was not successful in his application, I do not grant the order of possession or the recovery of the filing fee.

As the tenant was partially successful in her application, I find that the tenant is entitled to monetary compensation pursuant to section 67 of the *Act*, in the amount of **\$25.00** to for partial recovery of the filing fee. **I order that the \$25.00 be deducted from the \$31.20 owing from April 2012 rent and that the balance of \$6.20 be paid to the landlord within one week of this Decision.** I dismiss all other aspects of the tenants' application.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 12, 2012

Residential Tenancy Branch