



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant's Application seeks an order to cancel a 10 day Notice to End Tenancy for unpaid rent and to recover the filing fee for the Application.

The Landlords filed an Application requesting an order of possession based on unpaid rent, and seek monetary orders for unpaid rent, for compensation under the Act or tenancy agreement and to recover the filing fee for the Application.

One of the Landlords appeared, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified she served the Application and Notice of Hearing on the Tenant on May 28, 2012, by posting it on the door of the rental unit. Furthermore, when the Tenant filed her Application, she was provided with a Notice of Hearing for her Application and both of these Applications were scheduled to be heard at the same time. Nevertheless, the Tenant did not appear at the hearing. I find the Tenant has been duly served in accordance with the Act.

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 Matters

This hearing was by telephone conference call, and was to begin at 1:30 p.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was one of the Landlords.

The Landlord testified that the Tenant had moved out of the rental unit on or about June 5, 2012, as a result of an order of possession granted in an earlier hearing. Therefore, I dismiss the portions of the Landlords' Application seeking an order of possession.

As the Tenant did not attend the hearing by 1:40 p.m. and because the Tenant has already vacated the rental unit, I dismiss her Application without leave to reapply.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlords to monetary relief?

Background and Evidence

The Landlord testified she served the Tenant with a 10 day Notice to End Tenancy on May 15, 2012, by sending it in the mail. As the Tenant filed her own Application to cancel this Notice, I find the Tenant has been duly served with the 10 day Notice to End Tenancy.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Tenant applied to cancel the Notice as described above.

The Landlord testified that the rent has not been paid for May and also for June of 2012.

The Landlord testified that the monthly rent for the rental unit is \$1,400.00, which is due on the first day of the month, and the Tenant paid her a security deposit of \$700.00 on or about March 11, 2012.

The Landlord also testified that the rental unit has been damaged.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under section 26 of the Act, the Tenant could not withhold rent unless she had an order from the Residential Tenancy Branch allowing her to do so, or, if she had other authority under the Act to withhold rent from the Landlord. I find there is no evidence that the Tenant was entitled to withhold rent.

I find that the Tenant has not paid all the rent due to the Landlord, and therefore, has breached section 26 of the Act and the tenancy agreement.

I find that the Landlords have established a total monetary claim of **\$2,850.00**, comprised of \$2,800.00 in rent due for May and June of 2012, and the \$50.00 fee paid by the Landlords for this application.

I find that the Landlords are holding the security deposit of \$700.00, and have suffered a loss due to the breach of the Tenant. Under section 64 of the Act, I allow the Landlords to amend their claim to include a request to retain the security deposit. Furthermore, pursuant to section 72 of the Act, I allow the Landlords to retain the security deposit in partial satisfaction of the claim. Consequently I order that the Landlords retain the deposit of \$700.00 in partial satisfaction of the claim and I grant them an order under section 67 for the balance due of **\$2,150.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Landlords have leave to apply for monetary compensation for the alleged damages to the rental unit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 14, 2012.

Residential Tenancy Branch