



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR

For the landlord – OPR, OPC, MNR|, MNSD, MNDC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. The tenant applied to cancel the 10 Day Notice to End Tenancy for unpaid rent. The landlord applied for an Order of Possession for unpaid rent; for an Order of Possession for cause; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant, the landlord and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing however the tenant did not provide any documentary evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

At the outset of the hearing the landlord's agent advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Issue(s) to be Decided

- Is the tenant entitled to cancel the Notice to End Tenancy for unpaid rent?

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep the security deposit?

Background and Evidence

The parties agree that this tenancy started on November 01, 2010. They also agree that rent was \$650.00 per month. The tenant testifies that the tenancy ended on April 29, 2013. The landlord's agent testifies that the tenancy ended on or about April 25, 2013. The parties disagreed about the amount of the security deposit but eventually agreed that the tenant paid a security deposit of \$325.00 on November 15, 2010.

The landlord's agent testifies that the tenant paid \$100.00 on March 05, 2013 in cash. A cheque came for \$650.00 on March 20, 2013 from Disability for the tenants rent and this was originally applied to the March rent leaving a credit of \$100.00 which was returned to the tenant on March 21, 2013. The tenant signed a receipt stating that the tenant had received the \$100.00 back from the landlord.

The landlord's agent testifies that after they had returned the \$100.00 to the tenant they realized that the cheque from disability was in fact for April's rent. The landlord served the tenant with a 10 Day Notice to End Tenancy on April 13, 2013 by posted it to the tenant's door. This Notice informed the tenant that rent of \$650.00 was owed for April however the landlord testifies that in fact this rent was owed for March, 2013. The tenant had five days to either pay the outstanding rent or file an application for dispute resolution or the tenancy would end on April 30, 2013. The landlord testifies that the tenant failed to make any more rent payments.

The landlord's agent testifies that the tenant failed to leave the rental unit in a clean condition and the carpets had to be vacuumed and cleaned. The landlord was not feeling well so the carpets could not be cleaned straight away in order to re-rent the unit for May 01, 2012. The landlord's agent testifies that he has cleaned the carpets and the unit will be

advertised for rental today. The landlord therefore seeks to recover a loss of rental income for May, 2013 to the sum of \$650.00.

The landlord seeks an Order to keep the tenants security deposit in partial satisfaction of the landlord's monetary claim. The landlord also seeks to recover the \$50.00 filing fee from the tenant.

The landlord testifies that the tenant was observed moving from the rental unit on April 25, 2013 and had a moving truck at the property. The tenant returned the next day and removed the remainder of her belongings in a pickup truck and the landlord changed the locks to the rental unit on April 27, 2013.

The tenant disputes the landlord's claims. The tenant testifies that she paid \$100.00 in rent on March 05, 2013 then was out of town until March 15, 2013. On March 17, 2013 the tenant testifies that she paid \$650.00 in cash as the tenant claims she had forgotten she had already paid \$100.00 on March 05, 2013. The tenant testifies that the landlord would never give the tenant a rent receipt so the tenant had asked the Disability people to pay the rent cheque directly to the landlord instead of the tenant. The tenant testifies that a neighbour saw the tenant pay the landlord however the tenant did not ask the neighbour to attend the hearing to give evidence under oath.

The tenant disputes the landlords claim for a loss of income for May. The tenant testifies that she had already planned on moving out after she was told this was an illegal suite and Disability would no longer pay the rent for May because they had also been informed the suite was illegal. The tenant testifies that she had moved some of her belongings out but when she went to retrieve the rest on April 29, 2013 the landlord had removed the tenant's belongings and changed the locks.

The landlord's agent disputes the tenants claim. The landlord testifies that the tenants belongings had all been removed by the tenant and the locks were actually changed on April 27 after the tenant had already moved from the unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. When a tenant makes a claim to cancel a Notice to End Tenancy for unpaid rent and testifies that the rent was paid then the burden of proof falls to the tenant to provide some evidence to show that the rent was paid. In this matter the tenant has provided no corroborating evidence and the landlord contradicts the tenants claim. Consequently without any corroborating evidence from the tenant I find the tenant has not met the burden of proof that rent for March, 2013 was paid on March 17, 2013 consequently the landlord has established a claim to recover the sum of **\$650.00** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for a loss of rent for May, 2013; I refer the landlord to s. 7(2) of the *Act* which states:

A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In effect this means that the landlord must take reasonable steps to get the unit rented for May, 2013. The landlord's agent testified that the tenant left the rental unit in an unclean condition. The landlord was not feeling well so could not clean the carpets in order to get the unit re-rented and the landlord has only just advertised the unit today. The landlord has provided no evidence to support their claim that the unit was left unclean and I find the landlord's agent testimony that the landlord was not feeling well is not a sufficient reason not to try to mitigate the loss of rental income by taking steps to prepare and advertise the unit for rent. I therefore dismiss the landlords claim for a loss of rental income for May, 2013 on these grounds.

I Order the landlord to keep the security deposit of \$325.00 pursuant to s. 38 (4)(b) of the *Act*. This sum will be offset against the landlord monetary claim.

I further find the landlord is entitled to recover the \$50.00 filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for March, 2013	\$650.00
Filing fee	\$50.00
Less security deposit	(-\$325.00)
Total amount due to the landlord	\$375.00

With regard to the tenants claim to cancel the Notice to End Tenancy; I find as the tenant has now moved from the rental unit then the tenants claim no longer has any merit and is therefore dismissed.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$375.00. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The tenant's application is dismissed without leave to reapply.

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: May 15, 2013

Residential Tenancy Branch

