



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49.

The landlord and the female tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss their applications with one another.

At the commencement of this hearing, the parties confirmed that this tenancy has ended and the landlord has vacant possession of the rental unit. The female tenant testified that she left the rental unit on June 28, 2013, leaving the keys under the mat and in the kitchen of the rental unit. The landlord confirmed that he obtained possession of the rental unit early in July 2013. The female tenant testified that the male tenant, her husband, vacated the rental unit on February 6, 2013. The parties in attendance at the hearing confirmed that no 2 Month Notice was issued by the landlord.

The female tenant withdrew her application to cancel the 2 Month Notice as no such notice was issued and withdrew her application to cancel the 10 Day Notice as she has ended her tenancy. The tenants' application is withdrawn.

The landlord also withdrew his application for an Order of Possession as he already has possession of the rental unit. The landlord's application for an Order of Possession is withdrawn.

The landlord said that he posted two sets of 10 Day Notices on the tenants' door. The first of these was posted on June 2, 2013; the second was on June 18, 2013. The female tenant received both of these notices.

The landlord testified that he sent copies of his dispute resolution hearing package to the tenants/respondents by registered mail to their last known address on June 8, 2013, by registered mail. The female tenant said that she had not received the landlord's dispute resolution hearing package and had not provided the landlord with her forwarding address. As the landlord testified that he realized that the male tenant had vacated the rental unit many months before he sent the hearing package to him by registered mail, I am not at all satisfied that the landlord has served his application for dispute resolution to the male tenant. As the landlord's application for dispute resolution has not been served to the male tenant in accordance with section 89 of the *Act*, I dismiss the landlord's application for dispute resolution naming the male tenant as a respondent.

Sections 89(1)(c) and 89(2)(b) of the *Act* both require a landlord who attempts to serve the landlord's dispute resolution hearing package, including the application for dispute resolution, to a tenant by registered mail by sending it "to the address at which the tenant resides." By June 8, 2013, when the landlord sent his dispute resolution hearing package to the female tenant, the landlord was aware that the female tenant no longer resided at the dispute address. As such, I advised the parties in attendance that I was not satisfied that the landlord had served his application for dispute resolution to the female tenant in accordance with section 89 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This one-year fixed term tenancy commenced on October 1, 2012. Monthly rent was set at \$1,000.00, payable in advance on the first of each month. The landlord continues to hold the \$500.00 security deposit paid for this tenancy on August 30, 2012.

The landlord's application for a monetary award of \$1,650.00 included \$150.00 in unpaid rent owing from June 2013, \$1,000.00 for unpaid rent from July 2013, and authorization to retain the \$500.00 security deposit.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. Even though the female tenant had not been properly notified of the landlord's application for a monetary award of \$1,650.00, the female tenant expressed an interest in discussing the landlord's application and her own concerns about this tenancy with the landlord so as to try to resolve all outstanding issues in dispute. In so doing, she waived her right to advance notice of the landlord's application for dispute resolution and said that she wanted to try to resolve this matter if that were possible. During the hearing, the parties in attendance discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Those in attendance agreed to a final and binding resolution of all issues arising out of this tenancy under the following terms:

1. The landlord agreed to return \$250.00 from the security deposit for this tenancy to the female tenant at an address she identified at the hearing.
2. Both parties in attendance agreed that all monetary issues arising out of this tenancy will be resolved by the landlord's commitment to return the above-noted portion of the security deposit to the female tenant.
3. Both parties in attendance agreed that this settlement agreement constituted a final and binding resolution of all issues arising out of this tenancy and furthermore committed that they will not initiate any additional action of any kind arising out of this tenancy.

Conclusion

The tenant's application for dispute resolution is withdrawn as is the landlord's application for an Order of Possession based on his 10 Day Notice.

The landlord's application for dispute resolution naming the male tenant as a respondent is dismissed.

In order to implement the above settlement reached between the landlord and the female tenant, I issue a monetary Order in the female tenant's favour in the amount of \$250.00. I deliver this Order to the female tenant in support of the above agreement for use **only** in the event that the landlord does not abide by the terms of the above

settlement. The female tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 15, 2013

Residential Tenancy Branch

