



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, MNR, CNC, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55, and
- A monetary order for rent owed and damages pursuant to Section 67.

The tenant applied for the following:

- An order to cancel the notice to end tenancy for cause pursuant to Section 47,
- An order to force the landlord to follow the Act and complete repairs,
- An order to suspend or set conditions on the landlord right to enter;

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

Ending Tenancy

At the outset of the hearing, the parties advised that the tenant has already vacated the rental unit. As the tenant is no longer in the rental unit, I find the issue of an Order of Possession is now moot and the portion of the tenant's application seeking repairs and restricting access are also resolved because the tenancy has ended.

The landlord testified that they still wish to proceed with respect to the landlord's monetary claims for rental arrears.

Tenant Amending Application

The tenant testified that she had amended her application to include a monetary claim seeking the return of her security deposit. However, no evidence of this amendment was in the file and the landlord testified that no such amendment was served on the landlord.

Accordingly, I find that the tenant has not yet made any monetary claim seeking the refund of her security deposit and therefore this matter will not be heard during these proceedings.

Issue to be decided

Is the landlord entitled to a monetary order for rent owed and damages?

Background and Evidence

According to the landlord, this tenancy started in November 2009 and the total rent for the unit was \$1,000.00. However, there were two co-tenants who each paid their rent separately, in the amount of \$500.00. Two security deposits of \$250.00 each were paid to the landlord.

The landlord testified that the tenant remained and the other tenant-in-common was incarcerated in May 2010. After the tenant-in-common was jailed, the vacancy in the unit was taken by another tenant-in-common, who still lives in the unit at present.

The landlord testified that the former tenant-in-common's personal possessions were stored for approximately a year and, when he was released, he then collected what he wanted and gave the landlord permission to retain his security deposit of \$250.00 for the costs of storage and disposal.

At the present time, the landlord is still holding \$250.00 in trust for the tenant participating in this dispute hearing.

The landlord testified that the tenant failed to pay rent of \$200.00 prior to recently vacating the rental unit and the landlord is claiming this amount in compensation. The landlord testified that there were damages of \$400.00 to the rental unit.

The tenant acknowledged that the \$200.00 was owed to the landlord, and testified that she attempted to pay the landlord the arrears, but the money was refused.

The tenant also testified that she feels that her security deposit is \$500.00 and is not \$250.00 as claimed by the landlord. According to the tenant, she paid both of the full deposits for the rental unit and is therefore entitled to a refund of \$500.00.

The tenant disputed the landlord's claim for damages.

Analysis:

In regard to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

In this instance, I find that the testimony of both parties confirms that the tenant owed \$200.00 at the time the tenant vacated.

I find that the landlord is entitled to \$250.00 comprised of \$200.00 in arrears and the \$50.00 cost of this application. I order that the landlord retain the tenant's \$250.00 security deposit in full satisfaction of the claim.

In regard to the landlord's additional claims for damages, I find that section 59(2) of the Act states that an application for dispute resolution must be in the applicable approved form and include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

Section 59(5) states that the application for dispute resolution may be declined if, in the dispute resolution officer's opinion the application does not disclose a dispute that may be determined or the application does not comply with section 59(2).

Section 62(4)(b) of the Act states that a dispute resolution officer may dismiss all or part of an application for dispute resolution if the application does not disclose a dispute that may be determined under this Part.

Given the above, I find that the landlord has made a claim for damages, but failed to provide the necessary details and evidence sufficient to determine the subject matter of the dispute. Accordingly, I dismiss the portion of the landlord's application pertaining to the damages claim with leave to reapply.

I find that the landlord is entitled to total compensation of \$250.00, and I order that the landlord retain the tenant's \$250.00 security deposit in satisfaction of the claim.

I hereby dismiss the tenant's application in its entirety without leave.

The portion of the landlord's application seeking compensation for damages is hereby dismissed with leave to reapply.

Conclusion

The tenant's application is dismissed because the issue of possession of the rental unit is moot.

The landlord is partially successful in the application and is ordered to retain the tenant's security deposit in full satisfaction of the monetary claim. The landlord's monetary claim for damages is dismissed with 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: November 13, 2013

Residential Tenancy Branch

