



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNR MNSD MNDC FF
For the tenant: CNC RP 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 landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant and the landlord attended the teleconference hearing. 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.

Both parties confirmed that they received the evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. Based on the above, I find the parties were sufficiently served in accordance with the *Act*.

I have reviewed all oral and documentary 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 and Procedural Matters

The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause and an order directing the landlord to comply with the *Act*, regulation or tenancy agreement. The tenant testified that she vacated the rental unit as of October 31, 2013, prior to the date of this hearing. As a result, I **dismiss** tenant's application in full, without leave to reapply, as I find the tenant's application is moot given that the tenancy has ended by the tenant vacating the rental unit.

As a result of the above, the landlord requested to withdraw his application for an order of possession as the tenant already returned possession of the rental unit to the landlord by vacating the rental unit on October 31, 2013. Therefore, this proceeding continued with consideration of the landlord's monetary claim, which includes a request for authorization to retain the tenant's security deposit.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

The parties agree that a month to month tenancy agreement began on July 1, 2013. Monthly rent in the amount of \$1,300.00 was due on the first day of each month. The parties confirmed that a security deposit was paid by the tenant at the start of the tenancy, which the landlord continues to hold.

The landlord has applied for a monetary order in the amount of \$3,950 comprised \$1,300.00 for unpaid October 2013 rent, loss of November 2013 rent in the amount of \$1,300.00, anticipated loss of December 2013 rent in the amount of \$1,300.00, \$50.00 for the filing fee, and listed \$650.00 for bailiff costs and indicates "repairs" in his evidence, however, the landlord's application did not include a claim for damages to the rental unit.

The tenant confirmed receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated October 2, 2013 on October 2, 2013. The tenant applied to dispute a 1 Month Notice to End Tenancy for Cause on October 2, 2013, however, did not dispute the 10 Day Notice served on October 2, 2013. The tenant

ultimately vacated the rental unit on October 31, 2013 prior to the dispute resolution hearing. I note that there was no evidence submitted to support that a 1 Month Notice to End Tenancy for Cause was served upon the tenant. The effective vacancy date listed on the 10 Day Notice was October 12, 2013. The tenant remained in the rental unit until October 31, 2013. During the hearing, the tenant confirmed that she did not pay rent for the month of October 2013 in the amount of \$1,300.00.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I find the landlord's claim for \$1,300.00 for anticipated loss of December 2013 rent is premature. As a result, **I dismiss** this portion of the landlord's claim **with leave to reapply**.

I find the landlord's claim for \$650.00 for bailiff fees is premature and that the landlord did not apply for damages as part of this application for dispute resolution. As the landlord did not apply for damages in the application before me, I find the landlord is at liberty to apply for a claim for damages. Regarding the landlord's claim for bailiff fees, **I find** this portion of the landlord's claim to be premature and as a result, **I dismiss** this portion of the landlord's claim **with leave to reapply**.

Landlord's claim for unpaid rent for October 2013 – During the hearing, the tenant confirmed that rent for the month of October 2013 in the amount of \$1,300.00 had not been paid. Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. As a result, **I find** the landlord is entitled to **\$1,300.00** in compensation for unpaid October 2013 rent.

Landlord's claim for loss of November 2013 rent – During the hearing, the tenant confirmed that she vacated the rental unit on October 31, 2013. The effective date of the 10 Day Notice is listed as October 12, 2013, which the tenant did not comply with, as the tenant did not vacate the rental unit until October 31, 2013. The tenant also did not pay rent for the month of October 2013. As a result, **I find** the landlord is entitled to compensation for November 2013 rent as it is not reasonable that the landlord would be able to find a new tenant for November 1, 2013 when the tenant vacated the rental unit on October 31, 2013. Therefore, **I find** the landlord is entitled to compensation for the loss of rent for the month of November 2013 in the amount of **\$1,300.00**.

As the landlord's application had merit, **I grant** the landlord the recovery of the **\$50.00** filing fee.

I find the landlord has established a monetary claim in the amount **\$2,650.00** comprised of \$1,300.00 in unpaid rent for October 2013, \$1,300.00 for loss of November 2013 rent, plus the \$50.00 filing fee. The tenant's security deposit of \$650.00 has accrued \$0.00 interest since the start of the tenancy. **I ORDER** the landlord to retain the tenant's full security deposit of \$650.00 in partial satisfaction of the landlord's monetary claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$2,000.00**.

Conclusion

The tenant's application was dismissed as it was moot, without leave to reapply.

The landlord's claim for anticipated loss of December 2013 rent, and bailiff fees are premature and therefore **dismissed with leave to reapply**. As the landlord's application did not include an application for damage to the rental unit, the landlord is at liberty to apply for a monetary order for damages to the rental unit.

The landlord has been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$2,000.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: December 6, 2013

Residential Tenancy Branch