



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPR, SS, MNR, MNSD, CNR, RPP, FF

Introduction

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

The Tenant's Application is seeking an order to cancel a 10 day Notice to End Tenancy for unpaid rent, for an order for the Landlord to return the Tenants' personal property and to recover the filing fee for the Application.

The Landlord filed a claim for an order of possession based on unpaid rent, an order for possession based on a breach of an agreement with the Landlord, an order of possession based on cause, and requested monetary orders for unpaid rent, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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 Issues

The parties agreed that the male Tenant passed away prior to the end of the tenancy. The female Tenant testified there is an executor administering the estate of the deceased Tenant.

The parties agreed that the female Tenant has already left the rental unit and therefore, I find an order of possession is no longer necessary.

The Landlord had submitted 75 pages of evidence to the Branch two days prior to the hearing. Under the rules of procedure, the Landlord was required to provide this evidence five business days in advance of the hearing. Therefore, I did not allow this documentary evidence of the Landlord into evidence.

In any event, the Landlord had not made a claim in this Application for compensation for cleaning of, or damages to, the rental unit, and the testimony of the Landlord was that this evidence pertained to those claims. It was explained to the Landlord and the Tenant that the Landlord may still make an Application for damages to, or cleaning of, the rental unit and may submit this evidence for that Application; however, I note this must be done in accordance with the rules of procedure.

The Tenant testified she had removed all their personal property from the rental unit. Therefore, the Tenant no longer required an order for the Landlord to return personal property or to cancel a Notice to End Tenancy.

Therefore, the sole issue in this Application that required a determination was the claim for unpaid rent by the Landlord and the disposition of the security deposit.

Issue(s) to be Decided

Has the Tenant failed to pay rent when due?

Background and Evidence

The Landlord testified that the monthly rent for the rental unit was \$1,000.00, which was due on the last day of the month, and the Tenants paid her a security deposit of \$500.00 on or about March 1, 2013. The parties agreed there had been a written tenancy agreement for a fixed term of one year; however, the written tenancy agreement was not in the evidence before me. The parties were not in agreement on the date of the end of the tenancy agreement.

The Landlord testified that the Tenant moved out of the rental unit on or about January 29, 2014, without giving notice. The Landlord testified that the Tenant put a stop payment on the rent cheque for February 2014. The Landlord testified that the rental unit was re-rented on March 1, 2014.

The Tenant agreed she had put a stop payment on the cheque for February. She testified that she sent the Landlord a text message in January 2014, informing the

Landlord she was leaving the rental unit in the middle of February. The Tenant felt she should only have to pay a half month of rent for February because of this.

The Tenant testified she vacated the rental unit on January 29, 2014, and had left cleaning supplies behind as she intended to return to the rental unit and clean it. She testified when she returned to the rental unit the locks had been changed. According to the Tenant the police attended due to this. The Tenant acknowledged that all the personal property in the rental unit had now been recovered by her.

Analysis

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

Based on the evidence before me, I find this tenancy ended on February 28, 2014.

I find the Tenant had not given the required Notice to End Tenancy to the Landlord, as a text message does not comply with the notice to end tenancy provisions in section 52 of the Act, and therefore, the February rent was required to be paid.

The Tenant also breached the Act by failing to pay February rent to the Landlord when due. 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 the Tenant had paid for emergency repairs in accordance with section 33 of the Act. I find the Tenant had no order, nor did she have any evidence she had paid for emergency repairs. This leads me to find the Tenant had no authority under the Act to withhold February rent from the Landlord.

Section 67 of the Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the breaches by the Tenant have caused the Landlord to suffer a loss. I find that the Landlord has established a monetary claim of **\$1,050.00**, comprised of \$1,000.00 in rent for February 2014, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of \$500.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$550.00**.

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.

As the relief sought by the Tenant was no longer required, I dismiss the Application of the Tenants.

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 Act.

Dated: March 27, 2014

Residential Tenancy Branch

