



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, ERP, LRE, 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, various other reliefs, and to recover the filing fee for the Application.

The Landlord filed a claim for an order of possession based on unpaid rent, 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.

Only the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. The Tenant did not appear despite having a Notice of Hearing from her own Application. The Landlord also testified she had served the Tenant with the Notice of Hearing by registered mail, although the Tenant refused or neglected to accept the mail, and it was returned to the Landlord. The Tenant was deemed served with the registered mail five days after mailing. Based on the above, I find the Tenant had notice of the hearing and was duly served, although she did not attend the hearing.

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 Landlord testified that the Tenant had vacated the rental unit on March 24, 2014, without notifying the Landlord she was doing so.

As the Tenant did not appear for the hearing of her Application, and has vacated the rental unit, I dismiss the Tenant's Application without leave to reapply.

I also find that since the Tenant has vacated the rental unit, an order of possession is no longer required by the Landlord.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to rent money?

Background and Evidence

This tenancy agreement began on August 20, 2013, with the parties agreeing on \$1,025.00 in monthly rent, payable on the first of the month, and the Tenant paid a security deposit of \$517.50 at the outset of the tenancy.

The Landlord submitted that the Tenant had been served on February 2, 2014, with a 10 day Notice to End Tenancy for **\$410.00** in unpaid February rent.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid in full within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Tenant applied to cancel the Notice as described above, although that Application has been dismissed.

The Landlord testified that the Tenant had paid no rent for March of 2014.

Analysis

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

I find that the Tenant has not paid all the rent due to the Landlord, and the Landlord has suffered a loss due to this. 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 was there any evidence she had paid for emergency repairs. This leads me to find the Tenant had no authority under the Act to withhold rent from the Landlord and she has breached the Act and tenancy agreement.

Section 67 of the Residential Tenancy 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 that the Landlord has established a total monetary claim of **\$1,485.00**, comprised of \$410.00 in rent due for February, \$1,025.00 in rent for March, and the \$50.00 fee paid by the Landlord for this Application. I note that the Landlord is entitled to the entire month of rent for March 2014, under the Act.

I order that the Landlord retain the deposit of \$517.50 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$967.50**. 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.

Conclusion

The Tenant did not appear for the hearing of her Application. The Tenant's Application is dismissed without leave to reapply. The Tenant left the rental unit on March 24, 2014, and therefore, an order of possession is no longer required. The Landlord has established that the Tenant failed to pay rent in the amount of \$1,435.00 for February and March of 2014. The Landlord may keep the security deposit in partial satisfaction of the amount owed and is granted a monetary order for the balance due of **\$967.50**

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 31, 2014

Residential Tenancy Branch

