



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, MT, RP, RR, OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession for unpaid rent;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To allow a tenant more time to make an application to cancel a Notice to End Tenancy;
2. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent;
3. To make emergency repairs for health and safety reasons;
4. To suspend or set conditions on the landlord's right to enter the rental premises; and
5. To allow a tenant to reduce rent for repairs.

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 at the hearing.

Preliminary matter

Tenant's application

At the outset of the hearing the tenant stated they are vacating the rental premises and are no longer proceeding with their application. As a result, I dismiss the tenant's application without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The parties entered into a tenancy which began in October 2010. Current rent in the amount of \$968.00 was payable on the first of each month. A security deposit of \$425.00 was paid by the tenant.

The landlord testified that the tenant did not pay all rent owed for August and was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord stated that the tenant did not pay the outstanding rent and did not pay any rent for September and October 2014. The landlord seeks to recover unpaid rent in the amount of \$2,717.00.

The tenant testified that they have a moving truck on the premises and will be out of the rental unit by October 15, 2014. The tenant stated the landlord is entitled to receive an order of possession effective October 15, 2014. The parties agreed that they would meet at the rental unit on October 15, 2014, at 1:00 pm to conduct the move-out condition inspection and return the keys.

The tenant testified that they were in rent arrears when the notice to end tenancy was issued, and have not paid any subsequent rent.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The evidence of the both parties support the tenant was in rent arrears on August 7, 2014, and that they have not paid any subsequent rent. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord.

I find that the landlord has established a total monetary claim of **\$2,767.00** comprised of unpaid rent for August, September and October 2014 and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$425.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$2,342.00**.

I find that the landlord is entitled to an order of possession effective **October 15, 2014 at 1:00 PM**. This order may be filed in the Supreme Court and enforced as an order of that Court.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession. The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim. The landlord is granted a formal order for the balance due.

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: October 14, 2014

Residential Tenancy Branch