



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR, RR, LAT
For the landlord: OPR, MNR, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), for an order allowing a reduction in rent, an order authorizing the tenant to change the locks to the rental unit and for recovery of the filing fee paid for this application.

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

At the beginning of the hearing, neither party raised any issue regarding the service of the other’s application or evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-I have determined that the portion of the tenant’s application dealing with a request for an order for a reduction in rent and for authority to change the locks to the rental unit are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant’s Application and dealt only with the tenant’s application to cancel a 10 Day Notice and the landlord’s application seeking an order of possession for the rental unit and a monetary order.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice and for recovery of the filing fee paid for this application?

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and for recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence shows that this tenancy began on December 1, 2013, monthly rent is \$850, and the tenant paid a security deposit of \$600 at the beginning of the tenancy.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

Landlord's application-

The landlord stated that the tenant failed to pay the full amount of rent for October 2014, and as a result, she issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent on October 2, 2014, by personal delivery to the tenant, listing unpaid rent of \$175 as of October 1, 2014. The effective move-out date listed was October 2, 2014. The tenant acknowledged receiving the Notice.

The landlord confirmed that rent for November was paid in full, but submitted that the tenant still owed \$175 for October 2014.

Tenant's response-

The tenant claimed that the landlord was not owed rent as he elected to use his overpayment of a security deposit as a partial rent payment.

Analysis

Landlord's Application:

Under section 29 of the Act, a landlord may not require or collect a security deposit in excess of the equivalent of one-half of a month's rent payment. If the landlord does collect an amount greater than allowed, the tenant may deduct the overpayment from rent.

In this case, the landlord required and accepted \$600 from the tenant as a security deposit, which was an overpayment of \$175, as half the monthly rent is \$425. I therefore find that the tenant was entitled to deduct that amount from a rent payment, and that he chose October to make such a deduction.

I therefore find that the tenant did not owe the rent of \$175 listed on the Notice when it was issued, and I therefore dismiss the landlord's application, without leave to reapply.

Tenant's application-

As I have found that the tenant did not owe the rent listed on the Notice, I grant the tenant's application seeking cancellation of the 10 Day Notice dated and issued on October 2, 2014, and I order that the Notice be cancelled with the effect that this tenancy will continue until it may otherwise end under the Act.

As the tenant was successful with his application, I allow the tenant recovery of his filing fee of \$50. I direct the tenant to withhold the amount of \$50 from a future month's rent payment in satisfaction of his monetary award and to notify the landlord of the said deduction.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The tenant's application is granted as I have cancelled the Notice and awarded the tenant recovery of his filing fee of \$50.

The portion of the tenant's application seeking a request for an order for a reduction in rent and for authority to change the locks to the rental unit was severed and 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 19, 2014

Residential Tenancy Branch

