



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, O, OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on October 3, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on October 7, 2014. The landlord testified she served the tenant a copy of the Application for Dispute Resolution/Notice of Hearing filed by the landlord by posting to the front door of the rental unit. The tenant testified she never received it.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy?
- b. Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right of entry to the rental unit?
- c. Whether the landlord is entitled to an Order for Possession?

- d. Whether the landlord is entitled to A Monetary Order and if so how much?
- e. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- f. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on October 28, 2013. The rent is \$820 per month payable on the first day of each month. The tenant paid a security deposit of \$410 at the start of the tenancy. The tenant(s) failed to pay the rent for the months of October. The tenant vacated the rental unit on October 15, 2014.

Analysis:

The tenant vacated the rental unit. As a result the claim to cancel the 10 day Notice to End Tenancy and the claim to suspend or set conditions on the landlord's right of entry to the rental unit is moot and accordingly is dismissed.

The Application for Dispute Resolution filed by the landlord seeks a monetary order in the sum of \$820 for non-payment of rent for October. I determined I could not consider the landlord's claim in this hearing as the landlord failed to prove sufficient service. The Residential Tenancy Act provides that where a party wishes to make a monetary claim against the other, service must take place by registered mail to where the other party resides or by personal service. The landlord testified she served the Application for Dispute Resolution/Notice of Hearing by posting. The tenant testified she did not receive it. I determined the landlord failed to prove sufficient service. I determined I could not consider the tenant's monetary claim as set out in her letter dated October 26, 2014 as the tenant failed to amend her Application for Dispute Resolution and failed to clearly set out what she was seeking. I advised both parties they had liberty to re-apply.

Settlement:

Both parties determined that they wished to settle the matter rather than re-apply. After a lengthy negotiation the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) of the Residential Tenancy Act as follows:

- a. The landlord shall retain the security deposit of \$410 in full satisfaction of all claims the landlord has against the tenant with respect to this tenancy.
- b. The landlord releases and discharges the tenant from all further claims with respect to this tenancy including, but not limited to claims for non-payment of rent and damage to the rental unit.
- c. The tenant releases and discharges the landlord tenant from all further claims with respect to this tenancy including, but not limited to all claims set out in her letter dated October 26, 2014.

As a result of this settlement I ordered that the landlord shall retain the security deposit of \$410.

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 20, 2014

Residential Tenancy Branch

