



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, MNDC

Introduction

This is an application to cancel a Notice to End Tenancy, and a request for a monetary order of \$1050.00 and recovery of the \$50.00 filing fee.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issues are whether or not to cancel a Notice to End Tenancy that was given for nonpayment of rent, and whether or not the tenant has overpaid his rent due to fees being charged that are not allowed under the Residential Tenancy Act.

Background and Evidence

This tenancy began approximately 3 years ago with a monthly rent of \$1200.00.

The Rental payment period goes from the 15th of one month to the 15th of the following month.

On January 1, 2015 the landlord served the tenant with the Notice to End Tenancy that stated that there was a total of \$1931.25 in rent outstanding.

The landlord testified that:

- The tenant had fallen behind on the rent and therefore as of December 15, 2014 the total rent outstanding was \$1931.25.
- They have now reduce that amount by \$620.90 as a result of some repairs that were paid for by the tenant and therefore the total amount outstanding to December 15, 2014 is reduced to \$1310.35.
- A portion of the amount outstanding is for late fees, however the tenant had agreed to pay \$100.00 per month for late fees.

The tenant testified that:

- He does not believe that he owes any rent for the time period ending December 15, 2014, and in fact believes that he has a credit.
- The Residential Tenancy Act does not allow the landlord to charge \$100.00 per month for late fees and in fact the only amount allowed is \$25.00 per month and therefore since he paid 14 late fees of \$100.00 per month he should be credited \$1050.00 for 14 overpayments of \$75 per month.
- The landlord also overcharged the security deposit by \$600.00. The landlord collected the equivalent of one full month rent (\$1200.00) security deposit, when the Residential Tenancy Act only allows the equivalent of one half of a months rent for security deposit..
- Therefore the total amount he has overpaid is \$1650.00, which is more than the \$1310.35 that the landlord claims is outstanding.
- He is therefore requesting that the Notice to End Tenancy be canceled.

Analysis

It is my finding that the tenant is correct in that the Residential Tenancy Regulations only allow landlords to charge a late fee of \$25.00 and therefore the tenant has been overcharged \$75.00 for each late fee.

I have reviewed the evidence supplied and it is my finding that the applicant has shown that there is are 14 overpayments of \$75.00 for late fees for a total of \$1050.00.

It is also my finding that the tenant is correct in that the Residential Tenancy Act only allows the landlord charge the equivalent of one half months rent for a security deposit and therefore if the tenant has paid the full months rent for security deposit the tenant does have the right to deduct \$600.00 from any rent outstanding. The tenant has provided no evidence to show that he paid a security deposit of \$1200.00, however the

landlord stated that he does not dispute the claim and will verify it by checking his records.

Therefore since the landlord is not disputing the tenants claim that the security deposit was overpaid by \$600.00 I will credit that amount towards the outstanding rent. If the landlord however finds evidence that security deposit was not overpaid, the tenant will be required to repay the \$600.00 that has been credited towards outstanding rent.

Further I allow the tenants request for recovery of the \$50.00 filing fee.

Therefore the total amount that I have credited towards the rent that was outstanding as of December 15, 2014 is as follows:

Late fee overpayments	\$1050.00
Security deposit overpayment	\$600.00
Filing fee	\$50.00
Total	\$1700.00

Therefore since the landlord is claiming that there was a total of \$1310.35 in rent outstanding, the tenant has a credit of \$389.65 which can be deducted from any rent outstanding for the period after December 15, 2014.

Conclusion

The ten-day Notice to End Tenancy, dated January 1, 2015 is hereby canceled and this tenancy continues.

I further Order that the tenant has a credit balance of \$389.65 that can be used towards rent outstanding for the period after December 15, 2014.

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: January 26, 2015

Residential Tenancy Branch

