



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

1. An Order cancelling a Notice to End Tenancy – Section 46.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant failed to attend to present their claim. The Landlord appeared and was ready to proceed. I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution and notice of hearing in person on January 9, 2015 in accordance with Section 89 of the Act. As the Tenant did not attend to pursue its application, I dismiss this application. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At a previous hearing the Landlord obtained an order of possession for the unit effective January 31, 2015 and no longer requires an order of possession. The Tenant is still in the unit. As the Landlord no longer requires an order of possession I dismiss the claim for an order of possession.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on June 15, 2011. Rent of \$830.00 is payable monthly on the first day of each month. Although the Landlord had given the Tenant a rent increase effective November 1, 2012 this increase was never enforced. At the outset of the tenancy the Landlord collected \$415.00 as a security deposit and \$50.00 as a pet deposit. The Tenant has not paid rent for January 2015 and the Landlord claims \$830.00. The tenancy agreement provides for a late rent fee of \$45.00 however the Landlord claims only \$25.00 for one late fee. The Tenant agreed to pay \$10.00 per month for parking starting September 1, 2014 and failed to pay for parking for November and December 2014 and for January 2015. The Landlord claims \$30.00 for unpaid parking charges. The Landlord also claims compensation for damages to the unit.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Based on the undisputed evidence of the Landlord I find that the Tenant failed to pay rent for January 2015 and that the Landlord is entitled to **\$830.00**.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Based on the undisputed evidence of the Landlord I find that an agreement existed in relation to parking at a cost of \$10.00 per month and that the Tenant failed to pay for the parking charges for three months. The Landlord is therefore entitled to **\$30.00**.

Section 7 of the Residential Tenancy Regulations provides that a landlord may charge an NSF fee or a late rent payment fee of no more than \$25.00 where such provision is contained in the tenancy agreement. Section 6 of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. As the tenancy agreement provides for a late fee in an amount greater than allowed under the Regulations I find that this provision is not enforceable and that there is in effect no enforceable term providing for any later rent fee and I dismiss this claim.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit undamaged except for reasonable wear and tear. As the tenancy has yet to end

the Tenant still has time to make repairs for damages caused by the Tenant. I therefore dismiss the Landlord's claim for damages to the unit with leave to reapply after the tenancy ends.

As the Landlord has been successful I find that the Landlord is entitled to recovery of the filing fee of **\$50.00** for a total entitlement of **\$910.00**. Deducting the combined security and pet deposit of **\$465.00** plus zero interest leaves **\$445.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security and pet deposit plus interest of \$465.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$445.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 29, 2015

Residential Tenancy Branch

