



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, O, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated March 25, 2015 with an effective move-out date of April 4, 2015 ("10 Day Notice"), pursuant to section 46;
- other unspecified remedies; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord and the "landlord's agent" SEN (collectively "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord's agent confirmed that she is the co-landlord for this rental unit, as she is on the land title for the rental unit, she drafted the tenancy agreement, and she conducted the move-out inspection with the tenant. She also confirmed that the landlord is her father.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") by way of registered mail. In accordance with sections 89 and 90 of the Act, I find that the landlord was duly served with the tenant's Application.

At the outset of the hearing, both parties confirmed that the tenant had vacated the rental unit by April 5, 2015. Accordingly, the tenant's application to cancel the landlord's 10 Day Notice is moot.

During the hearing, the tenant confirmed that she had applied for "other" remedies in order to determine how her security deposit would be dealt with since the tenancy was over. The tenant also indicated that there was unpaid rent and utilities owing to the landlord and that she wanted to resolve these issues at this hearing.

Issues to be Decided

Is the tenant entitled to a monetary award for the return of all or a portion of her security deposit?

Is the landlord entitled to a monetary award for unpaid rent and utilities arising out of this tenancy?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Both parties agreed that this tenancy began on October 1, 2013 and ended on April 5, 2015. Monthly rent in the amount of \$900.00 was payable on the first day of each month. The landlord testified that the tenant was also required to pay 1/3 of the electricity and gas utilities. Both parties agreed that a security deposit of \$450.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement governs this tenancy but a copy was not provided for this hearing. Both parties agreed that a move-out condition inspection occurred around April 4 or 5, 2015, but no report was completed. During the hearing, the tenant verbally provided her forwarding address to the landlord.

The landlord seeks \$3,000.00 in unpaid rent for the following months: \$200.00 for September 2014, \$900.00 for each of January, March and April 2015, and \$100.00 for February 2015. The tenant agreed that she owed rent of \$2,100.00 total from September 2014 to March 2015. The tenant disputed that she owed \$900.00 for April 2015 rent because she only occupied the rental unit until April 5, 2015, so she stated that the rent should be prorated for this month to \$150.00. The landlord also seeks \$1,044.35 in utilities from August 2014 to April 2015, which the tenant did not dispute. The landlord seeks \$40.00 in NSF charges for each of August, October and December 2014 and January 2015, totalling \$160.00, which the tenant did not dispute. The landlord seeks \$350.00 for carpet and house cleaning charges and \$500.00 to repair and replace a bathtub after the tenancy ended, which the tenant did not dispute.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues with respect to this entire tenancy:

1. Both parties agreed that the tenant will pay the landlord \$3,850.00 by June 15, 2015, by way of certified cheque;
2. Both parties agreed that the landlord will retain the tenant's entire security deposit of \$450.00;

3. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the tenant's Application at this hearing and any issues arising out of this tenancy;
4. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlord's potential claims against the tenant arising out of this tenancy;
5. Both parties agreed that they will not initiate any further claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise a full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties gave verbal sworn affirmation at the hearing that they understood and agreed to the above settlement terms free of any duress or coercion. Both parties testified that they understood that the settlement terms are legal, final, binding and enforceable, settling all aspects of this dispute and arising out of this tenancy.

Conclusion

To give effect to the settlement reached between the parties, I order the landlord to retain the tenant's entire security deposit of \$450.00.

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I issue a monetary Order in the landlord's favour in the amount of \$3,850.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant fails to abide by condition #1 of the above monetary agreement. The landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order in the event that the tenant fails to abide by condition #1 of the above monetary agreement. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application to cancel the landlord's 10 Day Notice is moot.

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: May 07, 2015

Residential Tenancy Branch