



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant - CNR, MNDC, OLC, ERP, RP, LRE

For the landlord – OPR, MNR

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a 10 Day Notice to End Tenancy for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; for an Order for the landlord to make emergency repairs for health or safety reasons; for an Order for the landlord to make repairs to the unit, site or property and to suspend or set conditions on the landlord's right to enter the rental unit. The landlord applied for an Order of Possession for unpaid rent or utilities and for a Monetary Order for unpaid rent or utilities.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing the parties advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that not all the claims on the tenant’s application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant’s application to cancel the One Month Notice to End Tenancy for unpaid rent or utilities and I will not deal with the remaining sections of the tenant’s claim at this hearing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties agreed that this tenancy started on April 15, 2013 for a fixed term of a year. The tenancy reverted to a month to month tenancy on April 15, 2014. Rent for this unit was \$700.00 per month due on the 15th of each month. The tenant testified that this was later changed to the 1st of each month although the tenant continued to pay some rent on the 15th of each month.

The landlord testified that the tenant failed to pay rent of \$2,243.33. this is comprised of \$400.00 for the rent rebate the tenant received in November, 2013 to January, 2014 to replace a garage door and opener for the landlord. The landlord gave the tenant aren’t rebate for this period to recoup the cost of the door and opener. The tenant did not replace the door opener and this work was completed by the landlord at a cost of \$400.00. As the tenant had already received the rebate the landlord seeks to recover the \$400.00 paid to the tenant. The landlord testified that the tenant owed \$700.00 from March 15 to April, 15, 2015; \$700.00 from April 15 to May 15, 2015 and \$93.33 for four days rent in June of \$93.33.

The landlord testified that the tenant was served a 10 Day Notice to End Tenancy (the Notice) on April 07, 2015. This Notice stated that there was outstanding rent of \$1,100.00 due on April 01, 2015. The Notice was served by registered mail and the landlord has provided the registered mail tracking number in documentary evidence. The Notice had an effective date of

April 07, 2015. The landlord testified that no rent was received after service of the Notice and the tenant did not vacate the rental unit until June 03, 2015.

The landlord seeks a Monetary Order for \$2,243.33.

The tenant testified that the landlord had served the tenant with a Two Month Notice to End Tenancy for landlord's use of the property on March 16, 2015. The Two Month Notice had an effective date of May 31, 2015. The tenant testified that she should have been entitled to a rent free month for May, 2015 yet the landlord seeks to recover rent for May.

The tenant agreed she did not do the work she had been paid for to replace the garage door opener and agreed the landlord paid \$400.00 for this work which he had already given to the tenant in the form of a rent rebate.

The tenant testified that she had paid rent for March but as the tenant thought we would not be talking about the unpaid rent she did not provide evidence concerning this. The tenant therefore disputed that she owed rent from March 15 to April 15, 2015 of \$700.00. The tenant does agree that she did not pay rent from April 15 to May 15 and then did not vacate the rental unit until June 03, 2015.

The landlord referred to his documentary evidence showing the tenant's email bank transfers for each of her payments and the landlord's documentary evidence showing the payments made; the dates; and the outstanding amounts. The landlord testified that this was discussed with the tenant and this document showing the rent paid was sent to the tenant on April 26, 2015. The tenant did not dispute the landlord's calculations at that time.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for unpaid rent; I refer the parties to s. 26 of the *Act* which states:

26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

While I accept that the tenant was served a Two Month Notice to End Tenancy for Landlords Use of the Property, technically the tenant would be entitled to the last month's rent in compensation for that Notice. However, the tenant failed to pay back the \$400.00 she received a rent rebate for work on the garage door opener and I am satisfied that the tenant failed to pay rent owed for March 15 to April 15, 2015. The tenant argued that she was not prepared to discuss the unpaid rent at the hearing and thought the discussion would be centered on her claim. Part of the tenant's claim was to cancel the Notice to End Tenancy for unpaid rent; therefore the tenant would be aware that she must prove any rent payments she allegedly paid in dispute of the landlord's claim to recover unpaid rent.

The tenant has provided no documentary evidence to meet the burden of proof in the matter of rent paid for March 15 to April 15, 2015. Consequently, when rent is outstanding and the landlord has issued a 10 Day Notice to End Tenancy the 10 Day Notice is effective if there is outstanding rent. The tenant should have either paid the outstanding rent within the five allowable days or vacated the rental unit on the tenth day. The 10 Day Notice takes precedence over the Two Month notice and the tenant would not be entitled to the free months' rent for May, 2015. I am therefore satisfied with the landlord's claim to recover unpaid rent to an amount of **\$2,243.33.**

As the tenant has vacated the rental unit prior to the hearing the tenant's claim to cancel the Notice no longer has any merit and is dismissed.

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$2,243.33.** This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

The tenant's application to cancel the 10 Day Notice to End Tenancy for unpaid rent is dismissed without leave to reapply.

As the tenancy has ended the tenant's application for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; for an Order for the landlord to make emergency repairs for health or safety reasons; for an Order for the landlord to make repairs to the unit, site or property and to suspend or set conditions on the landlord's right to enter the rental unit no longer have merit, as any Orders issued would not been enforceable as there is no longer a tenancy in place. These sections of the tenant's claim are therefore dismissed without leave to reapply.

The tenant's application for a Monetary Order for money owed or compensation for damage or loss is 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: June 04, 2015

Residential Tenancy Branch

