



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF; MT, CNR, ERP, FF

Introduction

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

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the Act for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to cross-examine one another.

The tenant confirmed that he had received and reviewed the landlord's evidence.

Preliminary Issue – Scope of Application

At the hearing both parties agreed that the tenant had vacated the rental unit. On this basis the parties withdrew the following claims:

- the landlord's application for an order of possession
- the tenant's application for:
 - more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
 - cancellation of the landlord's 10 Day Notice pursuant to section 46;
 - an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

As the tenancy has ended, the above-noted issues are withdrawn as they are moot.

At the hearing the landlord confirmed that she had not set out what compensation she sought in relation to the monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. The landlord asked to withdraw this claim. As there is no prejudice to the tenant in allowing the landlord to withdraw this claim, I allowed it.

Preliminary Issue – Hearing Procedure

At the beginning of the hearing and pursuant to rules 10.2 and 11.1 of the *Residential Tenancy Branch, Rules of Procedure*, I explained the procedure to both parties: the landlord would provide her testimony, the tenant would provide his testimony, and then the landlord would be permitted to provide reply testimony. I explained that the purpose of this procedure was to avoid testimony becoming a conversation.

Despite this explanation the tenant insisted on providing testimony contrary to this procedure. I have heard and considered all of the tenant's evidence—even that evidence provided contrary to the hearing procedure.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for her application from the tenant? Is the tenant entitled to recover the filing fee for his application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began 17 May 2014. The parties entered into a written tenancy agreement on 30 May 2014. The tenancy agreement set out that monthly rent of \$1,750.00 was due on the first. The tenant and landlord made a subsequent arrangement that rent for any given month would be payable on the last day of that month. The landlord testified that she continues to hold the tenant's security deposit in the amount of \$875.00, which was collected on 18 May 2014.

On 15 April 2015, the landlord issued the 10 Day Notice to the tenant. That notice set out that a rent in the amount of \$1,750.00 and due on 31 March 2015 had not been paid. The 10 Day Notice set out an effective date of 1 May 2015.

The landlord testified that the tenant vacated the rental unit at some point prior to 13 May 2015. The tenant testified that he vacated the rental unit at the end of April.

The landlord testified that the bank informed the landlord that the tenant's cheques for March's and April's rents would not be honoured.

The landlord testified that she has not received any receipts for emergency repairs from the tenant and that there are no previous orders of this Branch in respect of this tenancy.

The tenant admitted that he did not pay rent for March or April. The tenant testified that he withheld his rent as there was mould in the rental unit that was making occupants of the rental unit sick. The tenant testified that he put a "stop payment" on the cheque for April's rent as he did not see any other remedy for the mould issue.

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are various provisions of the Act that permit a tenant to deduct amounts from rent:

- Subsection 19(2) permits a tenant to deduct amounts from rent to recover the excess amounts of a security deposit that did not comply with the Act.
- Subsection 33(7) permits a tenant to deduct amounts from rent for the costs of emergency repairs incurred by the tenant.
- Subsection 43(5) permits a tenant to deduct the amount of a rent increase which did not comply with the Act from rent.
- Subsection 51(1.1) permits a tenant to deduct one month rent where the landlord has issued a notice to end tenancy pursuant to section 49.
- Subsection 65(1) and subsection 72(2) permit a tenant to deduct rent to recover an amount awarded in an application before this Branch.

There are no other provisions that permit a tenant to deduct amounts from rent.

By his own admission, the tenant failed to pay rent for March and April. The tenant did not vacate the rental unit until the end of April as such rent was due under the agreement for the tenant's occupancy of the rental unit for March and April. The tenant has not provided any evidence that indicates he was permitted to deduct any amount from rent. I find that the landlord has proven her entitlement to a monetary order for rent for both March and April.

The landlord applied to keep the tenant's security deposit of \$875.00, which was collected 18 May 2014. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in her application she is entitled to recover the filing fee of her application from the tenant.

As the tenant has not been successful in his application he is not entitled to recover the filing fee of his application from the landlord.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's claims for an order of possession and for compensation for losses are withdrawn.

I issue a monetary order in the landlord's favour in the amount of \$2,675.00 under the following terms:

Item	Amount
Unpaid March Rent	\$1,750.00
Unpaid April Rent	1,750.00
Offset Security Deposit Amount	-875.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,675.00

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 10, 2015

Residential Tenancy Branch

