



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application: CNR, CNC, FF, O
Landlord's Application: OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; and, authorization to retain the security deposit. Only the landlord appeared at the hearing.

The landlord confirmed that he had been served with the tenant's Application. Since the tenant did not appear at the hearing, I dismissed her Application against the landlord without leave.

The landlord testified that he served his Application upon the tenant by way of registered mail sent to the tenant on May 13, 2015 at the rental unit. The landlord orally provided a registered mail tracking number as proof of service. The landlord testified that the tenant vacated the rental unit on or about June 3, 2015 as this is the date the upstairs tenant advised him that the tenant had moved out, which the landlord confirmed by attending the rental unit on that same date and found to be vacant. I was satisfied that the landlord served the tenant with his hearing package in a manner that complies with the Act and I continued to hear from the landlord without the tenant present.

As the tenant has since vacated the rental unit and the landlord has regained possession of the rental unit an Order of Possession is no longer required and I do not provide one with this decision. The remainder of this decision deals with the landlord's monetary claims only.

Issue(s) to be Decided

1. Is the landlord entitled to recover rent for the months of May and June 2015 from the tenant?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy commenced in October 2011 and the tenant paid a security deposit of \$425.00 at that time. The tenant was required to pay rent of \$850.00 on the 1st day of every month. The landlord testified that the tenant used \$250.00 of the security deposit to pay rent approximately 1.5 years ago leaving a balance of \$175.00 in trust as a security deposit.

The landlord issued a 1 Month Notice to End Tenancy for Cause to the tenant on April 29, 2015 with a stated effective date of May 29, 2015. The tenant withheld rent that was due for May 2015 and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door on May 2, 2015 indicating rent of \$850.00 was outstanding and a stated effective date of May 12, 2015. The tenant did not pay the outstanding rent but filed to dispute both Notices to End Tenancy on May 5, 2015. The tenant's Application to cancel the Notices to End Tenancy was dismissed as explained in the Introduction section of this decision.

On June 3, 2015 the upstairs tenant informed the landlord that the tenant moved out of the rental unit. The landlord attended the property that same date and confirmed that the rental unit had been vacated. The landlord testified that the tenant gave him no notice of her intention to vacate. The landlord testified that he is in the process of cleaning up the rental unit and has not re-rented the unit as of the date of this hearing.

The landlord seeks to recover the unpaid and/or loss of rent for May 2015 and June 2015 in the sum of \$1,700.00.

Documentary evidence provided for my review included copies of: the Notices to End Tenancy; the tenancy agreement; and, written submissions.

Analysis

Pursuant to section 26 of the Act, a tenant is required to pay rent in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent under the Act.

Upon review of the tenancy agreement, I find the tenant was obligated to pay rent for May 2015 in the amount of \$850.00 on or before the first day of May 2015. I accept the undisputed submissions of the landlord that the tenant did not pay the rent. Nor, did the tenant present a legal basis for withholding rent. Therefore, I award the landlord unpaid rent of \$850.00 for the month of May 2015.

I also find that in filing to dispute the Notices to End Tenancy and then remaining in possession of the rental unit until June 3, 2015 without giving the landlord any notice of her intention to vacate on that date, the tenant precluded the landlord from making efforts to re-rent the unit for June 2015. Therefore, I find the tenant's actions resulted in the landlord's loss of rent for June 2015 and I grant the landlord's request to recover \$850.00 in loss of rent for June 2015 from the tenant.

As the landlord was successful in his Application, I further award the landlord recovery of the \$50.00 filing fee paid for his Application.

I accept the undisputed testimony of the landlord that the balance of the security deposit is \$175.00 and I authorize him to retain it in partial satisfaction of the amounts awarded to the landlord.

In light of all of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid Rent – May 2015	\$ 850.00
Loss of Rent – June 2015	850.00
Filing fee	50.00
Less: security deposit	<u>(175.00)</u>
Monetary Order for landlord	\$1,575.00

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The tenant's Application was dismissed.

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,575.00 to serve and enforce.

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 18, 2015

Residential Tenancy Branch

