



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, FF (Landlord's Application)
CNC (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord and the Tenant. The Landlord applied for an Order of Possession based on a notice to end tenancy for unpaid rent and utilities. The Landlord also applied for a Monetary Order for: unpaid rent; to keep the Tenant's security deposit; and, recovery of the filing fee.

The Tenant applied to cancel a notice to end tenancy for cause.

Preliminary Issues

The Landlord appeared for the hearing and provided affirmed testimony and written evidence prior to the hearing. The Tenant failed to appear for the 15 minute duration of the hearing and provided no evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord for this hearing.

The Landlord testified that he served the Tenant with his Application and Notice of Hearing documents by personal service on May 30, 2015. In the absence of any evidence from the Tenant to dispute this, I accepted the Landlord's testimony that the required documents were served in accordance with Section 89(1) (a) of the *Residential Tenancy Act* (the "Act").

The Landlord explained that the Tenant had vacated the rental unit on June 1, 2014. Therefore, I dismissed the Tenant's Application to cancel the notice to end tenancy and the Landlord's request for an Order of Possession as these are now moot issues.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent for May 2015?
- Can the Landlord keep the Tenant's security deposit?

Background and Evidence

The Landlord testified that this month to month tenancy started on November 1, 2014. The Tenant paid the Landlord a security deposit in the amount of \$225.00 in November 2014. Rent was payable by the Tenant in the amount of \$450.00 on the first day of each month.

The Landlord testified that the Tenant failed to pay rent in the amount of \$450.00 on May 1, 2015. As a result, the Landlord personally served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on May 11, 2015. The Notice had an effective date of May 21, 2015 due to unpaid rent in the amount of \$450.00 payable on May 1, 2015.

The Landlord testified that the Tenant vacated the rental suite after being served with the Notice and has not paid these rental arrears. As a result, the Landlord seeks a Monetary Order for unpaid rent.

Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due under a tenancy agreement whether or not a landlord complies with the Act.

I accept the Landlord's undisputed written and oral evidence that the Tenant did not pay rent under the tenancy in the amount of **\$450.00** for May 2015. As a result, I find the Landlord is entitled to this amount of unpaid rent.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee. Therefore, the total amount awarded to the Landlord is **\$500.00**.

As the Landlord already holds \$225.00 in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monterey Order for the remaining amount of **\$275.00 (\$500.00 - \$225.00)**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

The Tenant has breached the Act by not paying rent. Therefore, the Landlord can keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of **\$275.00**, pursuant to Section 67 of the Act.

The Landlord's claim for an Order of Possession is dismissed as the Tenant has now moved out. Accordingly, the Tenant's Application is dismissed.

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 10, 2015

Residential Tenancy Branch

