



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, FF, OPR, MNR

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order for a rent reduction – Section 65; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Parties agree that the Tenant moved out of the unit on November 8, 2015 and that the Landlord has possession of the unit. As a result the Landlord no longer requires an order of possession and I dismiss this claim. Further the dispute over the notice to end tenancy is no longer relevant or valid and I dismiss this claim of the Tenant.

As the tenancy has ended and as a rent reduction can only be obtained where rent is being paid, I find that the Tenant's claim is no longer valid and I dismiss this claim. As the Tenant's claims have been dismissed I dismiss the claim for recovery of the filing fee and in essence the Tenant's application is dismissed in its entirety. As no amendment was made to the application to include a claim for compensation, the Tenant remains at liberty to pursue an application for compensation in relation to losses experienced during the tenancy caused by the acts or negligence of the Landlord.

Issue(s) to be Decided

Is the Landlord owed unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy started in February 2015 and the rental unit was subsequently sold to the current Landlord. The Parties entered into a new tenancy agreement for the fixed period September 1, 2015 to January 31, 2016. Rent of \$1,800.00 was payable monthly on the first day of the month. The current Landlord holds a security deposit of \$900.00 and a pet deposit of \$200.00 that was paid in February 2015. The Tenant owes \$1,100.00 for September 2015 rental arrears and 1,800.00 for October 2015 rent. The Tenant paid the Landlord \$207.12 in rent for the period November 1 to 8, 2015 inclusive.

The Landlord claims unpaid rent for September and October 2015 and for late payment of rent fees.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Given the tenancy agreement requiring the monthly payment of rent of \$1,800.00, and based on the undisputed evidence of the rents that have not been paid, I find that the Landlord has substantiated unpaid rent of **\$2,900.00** for September and October 2015. The Tenant also owes rent for the period November

1 to 8, 2015 inclusive in the amount of **\$272.88** (per Diem: $\$1,800.00/30 \times 8 = \60.00 ; $\$60.00 \text{ p.d.} \times 8 \text{ days} = 207.12$ received from Tenant). The total rent owed by the Tenant for the period September 1 to November 8, 2015, inclusive is **\$3,172.88**.

Section 7 of the Residential Tenancy Regulations provides that a landlord may charge an NSF fee or a late rent payment fee of no more than \$25.00 where such provision is contained in the tenancy agreement. As there is no provision in the tenancy agreement for late rent fees I dismiss the Landlord's claim for these fees.

As the Landlord's application has met with substantial success I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$3,222.88**.

Deducting the combined security and pet deposit of **\$1,100.00** plus zero interest leaves **\$2,122.88** owed by the Tenant to the Landlord. As the tenancy agreement is only with Tenant CK, I restrict the monetary order to this Tenant only.

Conclusion

I Order the Landlord to retain the security and pet deposit plus interest of \$1,100.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$2,122.88**. If necessary, this order may be filed in the Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 19, 2015

Residential Tenancy Branch

