



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR, MNR, MNSD, MNDC, FF
Tenant: CNR, MNDC, OLC

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended both landlords.

The landlords provided documentary evidence to confirm the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on October 22, 2015 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

In addition, I note the hearing was originally scheduled in response to the tenant's Application for Dispute Resolution.

Based on the above, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

At the outset of the hearing the landlords confirmed the tenant vacated the rental unit on or before November 2, 2015. As a result, the landlords no longer require an order of possession. I amend the landlords' Application for Dispute Resolution to exclude the matter of possession.

The landlords also submitted evidence regarding the condition of the rental unit. However, the landlords did not submit an amendment to their Application for Dispute Resolution as such, I have not heard any claim for damage or cleaning of the rental unit. I note the landlords remain at liberty to file a separate Application for any such claim.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and utilities; for liquidated damages; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the *Act*.

Background and Evidence

The landlords submitted into evidence a copy of a tenancy agreement signed by the parties on April 28, 2015 for a 1 year fixed term tenancy beginning on May 1, 2015 for a monthly rent of \$895.00 plus 25% of utilities due on the 1st of each month with a security deposit of \$447.50 and a pet damage deposit of \$447.50 paid.

The tenancy agreement also contained a liquidated damages clause. The clause stipulates that if the tenants end the tenancy prior to the fixed term or is in breach of the *Act*, regulation or tenancy agreement in a manner that the landlord may end the tenancy prior to the end of the fixed term, the tenant shall pay the landlord \$447.50 as liquidated damages.

The landlords submit the tenant failed to pay rent and utilities in the month of October 2015; the tenant vacated the rental unit on November 2, 2015; and the tenant owes \$117.04 for gas and hydro utilities.

The landlords testified the rental unit was re-rented to a new tenant effective November 10, 2015.

Analysis

In the absence of the tenant, I dismiss her Application for Dispute Resolution in its entirety and without leave to reapply.

Based on the landlords' undisputed testimony I find the tenant has failed to pay rent for the month of October 2015 and utilities in the amount of \$117.04 as claimed.

I also find that because the tenant was still in the rental unit on the day that rent was due the tenant owes rent for the month of November 2015 less the period for which the landlords had secured new tenants. Therefore I find the landlords re entitled to compensation for 10 days of November rent in the amount of \$298.33 for lost revenue for the month of November 2015.

I further find the tenant has breached a material term of the tenancy agreement that caused the landlords to issue a notice to end tenancy for unpaid rent. As such, I find

the landlords are entitled to the liquidated damages claims and as allowed for in the tenancy agreement, in the amount of \$447.50.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,807.87** comprised of \$1,193.33 rent owed; \$117.04 utilities owed; \$447.50 liquidated damages and the \$50.00 fee paid by the landlords for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$447.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,360.37**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

I note the landlords continue to retain the pet damage deposit to be dispersed in accordance with the requirements set out in the *Act* once the tenant provides the landlord with a forwarding address.

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: December 14, 2015

Residential Tenancy Branch

