



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WIN CANADA INVESTMENTS CO. LTD,
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MNR, MNDS, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent;
2. To authorize a tenant to change the locks to the rental unit;
3. To suspend or set conditions on the landlord's right to enter the rental unit;
4. For a monetary order for compensation for loss or other money owed;
5. Return all or part of the security deposit; and
6. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on the Application for Dispute Resolution. . I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. As the applications were joined based on a Notice to End Tenancy for unpaid, I will, therefore, only consider the issues relating to the tenancy ending and unpaid rent. The balance of the tenants' applications are dismissed, with leave to reapply. At the outset of the hearing the parties agreed that the tenancy has ended and the landlord does not require an order of possession.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain all or part of the security deposit or pet deposit?

Background and Evidence

The parties agreed that the tenancy began on May 1, 2015. Rent in the amount of \$2,400.00 was payable on the first of each month. The tenants paid a security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00 (the "Deposits").

The landlord claims as follows:

a.	Unpaid rent for November 2015	\$1,100.00
b.	Unpaid rent for December 2015	\$1,400.00
c.	Loss of rent for January 2016	\$2,400.00
d.	Registered mail fee	\$ 30.00
e.	Filing fee	\$ 50.00
	Total claimed	

The landlord testified that this is a joint tenancy and at the start of the tenancy each of the co-tenants provided cheques for their portion of rent that was determined between them. The tenant KL paid cheques up to November 1, 2015 and the co-tenant LG provided cheques up to the end of October 2015. The landlord stated KL, never paid their portion for November 2015, rent. The landlord seeks to recover the amount of \$1,100.00.

The landlord testified that the tenants only paid a portion of rent for December 2015. The landlord seeks to recover unpaid rent for December 2015, in the amount of \$1,400.00.

The landlord testified that they seek further compensation for loss of rent for January 2016, due to the tenant refusing to allow them to show the rental unit. The landlord seeks to recover the amount of \$2,400.00.

The tenants' agent testified that the landlord was asked several times by email and text about the missing cheque for November 2015. The agent does not deny LG portion of rent was not paid.

The tenants' agent testified that the KL moved out in November 2015 and should not be required to pay their portion of rent for December 2015. The agent stated that the notice to end the tenancy was given to the landlord in November 2015 and the co-tenant LG moved out on December 23, 2015.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Tenant's notice

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*
(a) is not earlier than one month after the date the landlord receives the notice, and
(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

In this case the tenants rent the same property under the same tenancy agreement, and the agreement was signed by both tenants on April 24, 2015. Although each tenant paid their portion of rent to the landlord, I find the tenants are co-tenants under their tenancy agreement and are jointly responsible for meeting the term of the tenancy agreement.

Although I accept the evidence that one tenant vacated the rental unit in November 2015; however, that tenant is responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. Notice to end the tenancy was given in November 2015 to end the tenancy December 31, 2015.

In this case, the full amounts of rent due under the terms of the tenancy agreement were not paid for November 2015 and December 2015. The tenants are jointly and severally liable for any debts relating to the tenancy. I find the tenants breached the Act, when they failed to pay rent due under the terms of their tenancy agreement, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$2,500.00**.

The landlord further seeks loss of rent for the month of January 2016; however, the tenants gave proper notice to end their month-to-month tenancy. I find the landlord has failed to prove a violation of the Act, by the tenants.

The landlord claims that the tenants failed to allow them to show the rental unit. However, the showings appeared to be to potential purchasers, not renters. Further, if the landlord complied with the Act, by giving the tenants proper 24 notice the landlord was entitled to access the rental

unit without the tenants consent. I find the landlord has failed to prove a violation of the Act, by the tenants. Therefore, I dismiss this portion of the landlord's claim.

The landlord is claiming expenses relating to serving their documents; however, there is no authority under the Act, that allows me to grant these fees. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$2,550.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the Deposits of **\$2,400.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$150.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed with leave to reapply.

The landlord is granted a monetary order and may keep the Deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: January 07, 2016

Residential Tenancy Branch

