



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated October 30, 2015
- b. A monetary order in the sum of \$2052
- c. An order that the landlord return the security deposit/pet damage deposit.
- d. An order that the tenant recover the cost of the filing fee

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$4500 for unpaid rent and the cost of an agent
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of the landlord and in the absence of the Tenant. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on October 30, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was personally served on the Tenant on November 5, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated October 30, 2015?
- b. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement?

- c. Whether the tenant is entitled to an order to recover the security deposit/pet damage deposit?
- d. Whether the tenant is entitled to recover the cost of the filing fee?
- e. Whether the landlord is entitled to an Order for Possession?
- f. Whether the landlord is entitled to A Monetary Order and if so how much?
- g. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- h. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a month to month written tenancy agreement that provided that the tenancy would start on April 15, 2015. The rent is \$1000 per month payable on the first day of each month. The tenant paid a security deposit of \$500 at the start of the tenancy. The tenant was also supposed to pay a pet damage deposit of \$250 but failed to do so.

The tenant(s) failed to pay the rent for the months of October, November and December and the sum of \$3000 remains owing.

The parties were involved in another arbitration hearing that was held on December 11, 2015. In a decision dated December 15, 2015 the arbitrator dismissed the tenant's application to cancel a one month Notice to End Tenancy and granted an Order for Possession effective on 2 days notice.

The landlord testified the tenant vacated the rental unit on or about January 2, 2016.

Tenant's Application:

The tenant failed to appear at the hearing. As a result I ordered that the tenant's application including the application for a monetary order by dismissed without liberty to reapply.

Landlord's Application - Analysis - Order of Possession:

It is no longer necessary to consider the landlord's application for an Order for Possession as the landlord already has an Order for Possession and the tenant has vacated the rental unit.

Analysis - Monetary Order, Security Deposit and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of October, November and December and the sum of \$3000 remains outstanding. I dismissed the claim for

non-payment of rent for January as I determined that claim is premature. The Act imposes an obligation on the landlord to attempt to lessen their loss. If the landlord is unable to rent the rental unit for January 2016 the landlord retains the right to file a new claim seeking a monetary order for the loss of rent. I dismissed the claim for the cost paid to the agent. The only jurisdiction an arbitrator has relating to the cost of pursuing litigation is the cost of the filing fee.

I determined the landlord has established a claim against the tenant in sum of \$3000 for non payment of rent plus \$50 for the cost of the filing fee for a total of \$3050.

I determined the security deposit plus interest totals the sum of \$500. I ordered the landlord may retain this sum thus reducing the amount owing to \$2550.

Conclusion:

I ordered the application of the tenant be dismissed without liberty to re-apply. I ordered that the landlord shall retain the security deposit of \$500. I further ordered that the tenant pay to the landlord the sum of \$2550.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: January 05, 2016

Residential Tenancy Branch

