



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, 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; and
3. 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 or Utilities

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 matter

At the outset of the hearing the parties indicated that the landlord no longer owns the rental property as of December 1, 2015, and the only issue to be heard is the landlord claim for unpaid rent for October 2015 and November 2015.

Issue to be Decided

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

Background and Evidence

The parties agreed that the tenancy began on December 1, 2014. Rent in the amount of \$1,150.00 was payable on the first of each month. The tenants paid a security deposit of \$575.00.

The landlord claims as follows:

a.	Unpaid rent for October 2015	\$ 175.00
b.	Unpaid rent for November 2015	\$1,150.00
c.	Filing fee	\$ 50.00
	Total claimed	\$1,375.00

Unpaid rent for October 2015

The landlord testified that the tenants failed to pay all rent owed for October 2015. The landlord stated the tenants paid two separate amount totaling \$975.00, which leave a balance of \$175.00 outstanding.

The tenants testified that they paid the full amount of rent for October 2015, in one payment shortly after their cheque from social services was received. The tenant stated the landlord did not give them a receipt.

The landlord argued that a receipt was given to the tenants although not submitted as evidence.

Unpaid rent for November 2015

The tenants agreed they did not pay rent to the landlord for November 2015, as they felt the landlord has breached the Act, by failing to make repairs.

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.

Unpaid rent for October 2015

In this case, both parties have provided a different version of events. The evidence of the landlord was that the tenants failed to pay the amount of \$175.00. The evidence of the tenants was all rent was paid. As both versions are probable, I find without further evidence from the landlord, such as providing receipts that they have failed to prove that rent was not paid. Therefore, I dismiss this portion of the landlord's claim.

Unpaid rent for November 2015

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.

The evidence of the tenants was that they withheld rent for November 2015, because they believed the landlord breached the Act, by failing to make repairs. However, the tenants did not have the authority under the Act, such as an order from an Arbitrator to deduct any portion of rent. At no time do the tenants have the right to simply withhold rent because they feel they are entitled to do so. I find the tenants have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for November 2015, in the amount of **\$1,150.00**.

I find that the landlord has established a total monetary claim of **\$1,200.00** comprised of the above described amount and the \$50.00 fee paid for this application. I grant the landlord an order under section 67 of the Act in the above amount.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenant

Conclusion

The landlord is granted a monetary order.

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 06, 2016

Residential Tenancy Branch

