



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPN, MNR, FF; CNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent and based on a tenant's notice to end tenancy, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 11, 2015 ("10 Day Notice"), pursuant to section 46;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and her English language interpreter, PT (collectively "tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that her interpreter had authority to provide English language interpretation and speak on her behalf at this hearing. This hearing lasted approximately 59 minutes in order to allow both parties to negotiate a settlement of this claim.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's Application.

The landlord confirmed that he only received 11 photographs from the tenant, not any other evidence including receipts, invoices or other photographs. The tenant confirmed that she sent all her evidence to the landlord on January 4 or 5, 2016. As this evidence was not received by the landlord and was submitted late as per Rule 3.13 of the Residential Tenancy Branch *Rules of Procedure* ("ROP"), I advised the tenant that I could not consider her documentary evidence, except for the 11 photographs received by the landlord, at this hearing.

The tenant confirmed that she received the landlord's evidence, including written and digital evidence, less than 14 days prior to this hearing contrary to Rule 3.13 of the ROP, but that she had reviewed all of the evidence. Accordingly, I advised the tenant that I would consider all of the landlord's evidence at this hearing, as she had notice and reviewed the evidence prior to the hearing.

Preliminary Issues

At the outset of the hearing, both parties agreed that the tenant had vacated the rental unit on December 31, 2015. The landlord withdrew his application for an order of possession and the tenant withdrew her application to cancel the landlord's 10 Day Notice. Accordingly, these portions of both parties' applications are withdrawn.

In accordance with section 64(3)(c) of the *Act*, I amend the tenant's application to correct the spelling of the landlord's surname, which is now reflected in the style of cause. The landlord consented to this amendment request by the tenant.

In accordance with section 64(3)(c) of the *Act*, I amend the tenant's application to increase her monetary claim from \$1,730.00 to \$4,200.57, as the landlord consented to this amendment, which was reflected in the tenant's revised monetary order worksheet.

In accordance with section 64(3)(c) of the *Act*, I amend the landlord's application to increase his monetary claim from \$625.00 to \$1,250.00, as the landlord submitted filed amendments with his application and the tenant agreed that she owed \$1,250.00 for unpaid rent. The landlord claimed that he was not seeking an additional \$625.00 in rent for January 2016, as per the filed amendment submitted with his application because the tenant vacated the property on December 31, 2015.

Issues to be Decided

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

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

Both parties agreed that this month-to-month tenancy began on September 1, 2011 and ended on December 31, 2015. Both parties agreed that monthly rent in the amount of \$625.00 was payable on the first day of each month. Both parties agreed that the tenant paid a \$250.00 security deposit and the landlord continues to retain this deposit.

The landlord seeks \$625.00 in unpaid rent for each of November and December 2015, totalling \$1,250.00. The tenant seeks \$4,200.57 in compensation for damaged furniture, clothing, a school bag and a phone wire due to pests, and the loss of the use of a fridge. Both parties also seek to recover the \$50.00 filing fees paid for their applications.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that the landlord will retain the tenant's entire security deposit of \$250.00;
2. Both parties agreed that the tenant will pay the landlord \$100.00 by February 1, 2016, by way of a cheque to be sent by mail;
3. Both parties agreed to bear their own costs for the \$50.00 filing fees paid for their applications; and
4. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both parties' applications at this hearing.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties testified at the hearing that they understood and agreed to

the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final and binding and enforceable, which settle all aspects of this dispute.

Conclusion

In order to implement the above settlement and as advised to both parties during the hearing, I issue a monetary Order in the landlord's favour in the amount of \$100.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant does not abide by condition #2 of the above settlement. The landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible after a failure to comply with condition #2 of the above settlement. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

In order to implement the above settlement, I order the landlord to retain the tenant's entire security deposit of \$250.00.

Both parties must bear their own costs for the \$50.00 filing fees paid for their applications.

The landlord's application for an order of possession and the tenant's application to cancel the landlord's 10 Day Notice, are withdrawn.

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 14, 2016

Residential Tenancy Branch

