



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF

Introduction

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

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 tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on January 6, 2015, (the "Notice").

The landlord appeared.

Preliminary matters

Tenant's application

This matter was set for hearing by telephone conference call at 9:30 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenant did not attend the hearing by 9:40 A.M, and the landlord appeared and was ready to proceed, I dismiss tenant's application without leave to reapply.

Section 55(1) of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, pursuant to section 55 of the Act I must grant the landlord an order of possession of the rental unit.

Therefore, I find that the landlord is entitled to an order of possession effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant

Landlord's application

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on January 21, 2016, a Canada post tracking number was provided as evidence of service. I note that refusal or failure to accept service is not grounds for a Review.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

Issues to be Decided

Is the landlord entitled to an order of possession?

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

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

Background and Evidence

The tenancy began on January 1, 2016. Rent in the amount of \$1,950.00 was payable on the first of each month. A security deposit of \$975.00 was paid by the tenant.

The landlord testified that the tenant failed to pay rent for January 2016 and were served with the Notice on January 6, 2016. The landlord stated the tenant paid the amount of \$550.00 on January 11, 2016, leaving a balance due of \$1,400.00. The landlord stated the tenant then failed to pay rent for February 2016, when due under the terms of the tenancy agreement and the total outstanding rent was \$3,350.00. The landlord stated on February 9, 2016, the tenant paid the amount of \$1,700.00. The landlord seeks to recover unpaid rent in the amount of 1,650.00.

The landlord testified that the tenant signed a form K, acknowledging the strata bylaw and rules. The landlord stated the tenant failed to pay the strata move-in fee, which under the strata bylaw. The landlord seeks to recover the move-in fee in the amount of \$250.00.

Analysis

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

I accept the undisputed evidence that the tenant has failed to pay all rent owed for January 2016 and February 2016. I find the tenant breached section 26 of the Act, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$1,650.00**.

I accept the undisputed evidence of the landlord that the tenant was required to pay a strata move-in fee. This is supported by the tenancy agreement. I find the tenant breached the tenancy agreement and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the strata move-in fee in the amount of **\$250.00**.

I find that the landlord has established a total monetary claim of **\$1,950.00** comprised of the above amounts and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$975.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$975.00**.

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

Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession, and may keep the security deposit in partial satisfaction of the claim. I grant a monetary 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: February 19, 2016

Residential Tenancy Branch

