



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, OLC, RR, LRE

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 for unpaid rent;
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 notice to end tenancy;
2. For a monetary or money owed or compensation for damages;
3. To have the landlord comply with the Act,
4. To suspend or set condition on the landlord's right to enter;
5. To allow a tenant to reduce rent for repairs; 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.

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 tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy. The balance of the tenant's application is dismissed, with leave to reapply.

Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?
Is the landlord entitled to an order of possession for unpaid rent?
Is the landlord entitled to a monetary order?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on August 1, 2015. Rent in the amount of \$1,300.00 was payable on the first of each month. A security deposit of \$650.00 was paid by the tenant.

The parties agreed that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on March 2, 2016.

The tenant acknowledged that the outstanding rent of \$1,320.00 was not paid and that they did not pay rent for April 2016. The tenant stated they withheld rent because they believe the landlord has breached the Act.

Analysis

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

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.*

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant admitted rent was not paid within 5 days after receiving the Notice because they believed the landlord had breached the Act.

However, the tenant did not have the authority under the Act to deduct any portion from the rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so. Therefore, I dismiss the tenant's application without leave to reapply.

As the tenant was not successful with their application the tenant is not entitled to recover the filing fee from the landlord.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. 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.

I find that the landlord has established a total monetary claim of **\$2,720.00** comprised of unpaid rent, and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$650.00 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 **\$2,070.00**. 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 tenants failed to pay rent. The tenant's application to cancel the notice to end tenancy 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: April 20, 2016

Residential Tenancy Branch