



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, RR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed an Application requesting: an order of possession due to unpaid rent; a monetary order due to unpaid rent; to keep the security deposit in partial satisfaction of unpaid rent; and to recover the cost of the filing fee for this hearing.

The Tenant filed an Application requesting: to cancel a 10 day Notice to end tenancy for unpaid rent; for compensation for damage or loss under the Act; for an order for the Landlord to comply with the tenancy agreement; for a reduction in rent; and to recover the cost of the filing fee for the hearing.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided 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 to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

At the start of the hearing it was established that the Tenant has moved out of the rental unit. As the primary issue of whether or not the tenancy will continue is no longer in question, the Landlord withdrew his claim for an order of possession. The Tenant withdrew her claim to cancel the 10 day Notice To End Tenancy For Unpaid Rent dated May 3, 2016. The Tenant also withdrew her claim that the Landlord comply with the Act and for a reduction in rent. The Tenant testified that her only claim is for compensation for damage or loss under the Act, regulations, or tenancy agreement.

The Tenant testified that she did not provide a copy of the evidence she provided to the Residential Tenancy Branch to the Landlord. She also testified that she has more evidence that she would like to submit but has not had an opportunity because she has been out of town for a few weeks dealing with a family emergency. Due to these circumstances the Tenant requested an adjournment of the hearing. After considering the Tenant's testimony, I have dismissed the Tenant's application and I grant her leave to reapply for monetary compensation.

As the Tenant was not prepared to proceed with her application, I do not grant recovery of the cost of the fee for the hearing against the Landlord.

The Tenant testified that she did receive the Landlord's evidence with respect to the Landlord's claim. As such, the hearing continued and the Landlord's application was heard.

Issue(s) to be Decided

Is the Landlord entitled to the monetary relief sought for unpaid rent?

Is the Landlord entitled to keep the security deposit in partial satisfaction of unpaid rent?

Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Parties testified that the tenancy commenced on March 1, 2016, as a month to month tenancy. Rent in the amount of \$900.00 was due on the first day of each month. The Tenant paid a security deposit of \$450.00 to the Landlord.

The Landlord testified that the Tenant did not pay the rent owed for May 2016. The Landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("the Notice") dated May 3, 2016 on the Tenant by posting the Notice to the Tenant's door on May 3, 2016. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the tenant had five days to dispute the Notice. The Notice states that the Tenant has failed to pay rent in the amount of \$900.00.

The Tenant testified that she did not pay any rent for the month of May 2016. The Tenant testified that she withheld the rent because cable services were not being provided to her.

Section 26 of the Act states that a Tenant must pay rent when it is due under the tenancy agreement whether or not a landlord complies with the 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.

Analysis

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant did not pay any rent to the Landlord for the month of May 2016. The Tenant did not have a right under the Act to withhold paying the rent.

I find that the Tenant owes the Landlord \$900.00 rent for the month of May 2016. I order that the Landlord can keep the security deposit in the amount of \$450.00 in partial satisfaction of his claim for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful in his claim, I order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for the hearing.

I find that the Landlord has established a total monetary claim of \$1,000.00 comprised of \$900.00 in unpaid rent and the \$100.00 fee paid by the Landlord for this hearing. After offsetting the security deposit towards the claim of \$1000.00, I find that the Landlord is entitled to a monetary order in the amount of \$550.00. 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 failed to pay the rent for May 2016, and did not have a right under the Act to withhold rent.

The Landlord is granted a monetary order for unpaid rent in the amount of \$550.00.

The Tenant is granted leave to reapply for monetary compensation.

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: June 07, 2016

Residential Tenancy Branch