



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, MNSD, RR,

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$250 for unpaid rent
- c. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated May 11, 2016
- b. A monetary order in the sum of \$1090
- c. Whether the tenant is entitled to an order as to the amount of the security deposit or pet damage deposit paid?
- d. An order that the tenant be permitted to reduce rent for repairs, services or facilities agreed upon but not provided.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the 10 day Notice to End Tenancy was served on the Tenant by posting on May 11, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other.

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated May 11, 2016?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to an order as to the amount of the security deposit or pet damage deposit paid?
- d. Whether the Tenant is entitled to an order that the tenant be permitted to reduce rent for repairs, services or facilities agreed upon but not provided.
- e. Whether the landlord is entitled to an Order for Possession?
- f. Whether the landlord is entitled to A Monetary Order and if so how much?
- g. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The previous owner and the tenant entered into a written tenancy agreement that provided that the tenancy would start on July 1, 2010 and continue on a month to month basis. The rent was \$595 per month payable in advance of the first day of each month. On September 1, 2015 the rent was increased to \$604.75. The tenancy agreement provides that the tenant paid a security deposit of \$297.50 on July 1, 2010 and a pet damage deposit of \$297.50 on July 1, 2010. However, the box beside the pet damage deposit indicates the Pet Damage Deposit is not applicable. The present landlord states his records indicate a security deposit and pet damage deposit have not been paid.

The following provisions of the Residential Tenancy Act are relevant to a determination of the issues in this case:

Section 26(1) of the Act provides as follows:

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.

Section 72 of the Act provides as follows:

Director's orders: fees and monetary orders

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

The relationship between the parties is acrimonious. There have been a number of residential tenancy hearings and two additional hearings are scheduled for the future. An accounting of payments between the parties is confusing and difficult to determine. The tenant stated he was uncertain and blamed any underpayments on calculations made by the Ministry when they paid his rent directly. I do not accept this submission as being a defense to the failure to pay the full rent. Once a tenant has received a Notice to End Tenancy the law requires that he makes the payment subject to any amount he is legally entitled to deduct within 5 days to void the notice. An arbitrator does not have the jurisdiction to cancel a Notice to End Tenancy on the basis of the defense that the Ministry made an error in calculations. The tenant must ensure the calculations are correct.

However, based on the evidence presented I have made the following determinations:

- In a decision dated February 11, 2016 an arbitrator ruled that the Tenant was entitled to a monetary order in the sum of \$300 and that the rent be reduced until the landlord repaired the carpet as follows: \$70 for the month of March, \$80 for the month of April, and may continue to reduce his rent a further \$10 each month until and only until the carpet is replaced.
- On March 1, 2016 the Tenant paid the rent in full in the sum of \$604.75. As of this date the parties are in agreement that the rent had been fully paid.
- On April 1, 2016 the Tenant paid \$154.75 after deducting the following:
 - \$300 for the monetary order from the February 11, 2016 arbitration.
 - \$150 for the failure of the landlord to repair the carpet (March (\$70) and April (\$80)).
- On March 31, 2016 the landlord gave the Tenant a cheque in the sum of \$300 which represented payment of the February 11, 2016 monetary order. The tenant cashed the cheque on April 1, 2016. At this stage the tenant had deducted the \$300 from the rent and also cashed the cheque for that monetary order.
- On May 1, 2016 the Tenant paid the landlord the sum of \$264.75 after deducting the following:
 - \$90 for the failure to replace the carpet for May

- \$250.
- I determined that as of May 1, 2016 the landlord was \$250 short in rent and \$300 short as the tenant was paid twice for the February 11, 2016 monetary order of \$300
- On May 2, 2016 an arbitrator determined that the tenant was entitled to compensation and ordered that the landlord pay to the Tenant the sum of \$540. This decision and order was received by the landlord on May 9, 2016. Shortly thereafter the landlord made a request for clarification.
- On May 11, 2016 the landlord served a 10 day Notice to End Tenancy on the tenant alleging the Tenant owed the sum of \$250 in rent for May.
- Section 72(2) provides that where a tenant has obtained a monetary order requiring the landlord to pay money it can be applied against outstanding rent. I determined the tenant had the right to apply that monetary order against the \$250 outstanding leaving a balance owing under May 2, 2016 monetary order to \$290.
- The tenant paid the sum of \$264.75 in rent for June after deducting \$340. It is unclear why the tenant deducted the \$340. The carpets were installed on May 31, 2016 and I determined there is no basis for deducting the \$90 for the reduced value of the tenancy because of the failure of the landlord to repair the carpet. The sum of \$290 was owed under the arbitrator's order of May 2, 2016. The landlord served a 10 day Notice to End Tenancy on the Tenant for the failure to pay the rent for June. The tenant submitted that we are not dealing with the issue of the non-payment of the rent for June in this hearing.
- The landlord requested Clarification of the May 2, 2016 decision. Clarification was received by the landlord in early June. The landlord subsequently delivered to the Tenant a cheque in the sum of \$240 which represented payment in full of the May 2, 2016 monetary order after deducting the \$300 overpayment of the February 11, 2016 monetary order which the tenant failed to reimburse the landlord.

Tenant's Application:

Application to Cancel the Notice to End Tenancy::

I determined the Tenant was entitled to an order cancelling the 10 day Notice to End Tenancy dated May 11, 2016. The Notice alleged \$250 was owed in outstanding rent. At that time the landlord was in possession of the monetary order made by the arbitrator on May 2, 2016 that provided that the landlord was to pay the Tenant the sum of \$540. Section 72 provides that where there is a monetary order requiring the landlord to pay a sum of money to the tenant, that sum can be applied against outstanding rent. As a

result I determined \$250 of the May 2, 2016 monetary was applied against the arrears leaving a balance under that May 2, 2016 monetary order of \$290.

I make no determination of the whether the tenant had the right to withhold part of the rent for June as that issue is not before me and is due to be heard in another arbitration.

Application for a monetary order in the sum of \$1090:

I dismissed the tenant's claim in the sum of \$500 for harassment. The landlord's actions are not unreasonable. The tenant deducted the February 11, 2016 monetary order in the \$300 from the rent for April. Shortly thereafter he cashed the landlord cheque representing payment of that same amount. The tenant had no right to retain this amount and made no effort to reimburse the landlord this double payment. I do not accept the tenant's explanation of blaming the Ministry. The tenant was aware or should have been aware that he was receiving double benefit of that monetary order and he made not effort to reimburse the landlord. I do not accept the tenant's submission that it amounts to harassment when a landlord is attempting to exercise legal rights which he is entitled to exercise.

The tenant sought a monetary order in the sum of \$590 for the security deposit and pet damage deposit. The landlord disputes this claim. Firstly, the tenant is not entitled to a monetary order for the deposits as he is still living in the rental unit. The landlord has a legal right to retain the deposits until the later of the end of the tenancy or the date the landlord receive the Tenants forwarding address in writing. Secondly, the landlord disputes the payment of the deposits. After hearing the conflicting evidence I determined that a security deposit of \$297.50 was paid as provided in the tenancy agreement. I further determined the tenant failed to prove that a pet damage deposit was paid as there is a check mark in the box indicating it was not applicable. The tenant produced evidence that he had pets. However, this is insufficient to prove that he paid a pet damage deposit. The tenant failed to produce receipts or other financial documents to prove this payment. In the absence of such proof I determined it was appropriate to apply the provisions of the written tenancy agreement. I note this is consistent with the previous arbitrations where there is no mention that a pet damage deposit was paid.

The tenant has made other monetary claims in the written summary he presented. However, he stated there was confusion when he applied for arbitration and some of these claims are part of the two later applications which he has filed. The Application for Dispute Resolution totaled his monetary claims at \$1090. The harassment claim of \$500 and the recovery of the two deposits of \$590 make up this amount. The tenant

failed to identify other claims in his applications and I determined it was not appropriate to consider them.

Landlord's Claim - Order of Possession:

For the reasons set out above I ordered that the 10 day Notice to End Tenancy be cancelled. As a result I dismissed the landlord's application for an Order for Possession.

Landlord's Application for a Monetary Order:

I dismissed the Landlord's application for a monetary order in the sum of \$250 for non payment of rent as I determined the Tenant was entitled to apply a portion of the May 2, 2016 monetary order against that outstanding rent.

I dismissed the Landlord's application to recover the cost of the filing fee as the landlord has not been successful in this application.

Conclusion:

In summary I cancelled the 10 day Notice to End Tenancy dated May 11, 2016. I dismissed the tenant's application for a monetary order. I determined that a security deposit in the sum of \$298.50 had been paid but that the Tenant failed to prove that a pet damage deposit had been paid.

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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 16, 2016

Residential Tenancy Branch