



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF; CNR, MNDC, MNSD, RP, RPP

Introduction

This hearing dealt with the landlords' application (as amended) pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- an order requiring the landlord to return the tenant's personal property pursuant to section 65.

Both landlords and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord DS (the landlord) provided testimony and submissions on behalf of both landlords.

The parties admitted service of the opposing party's dispute resolution package including evidence. The tenant admitted service of the 10 Day Notice and the 2 Month Notice to End Tenancy for Landlord's Use (the 2 Month Notice).

Preliminary Issue – Amendment to Tenant's Application

At the hearing the tenant indicated that her request in relation to an order requiring the landlord to return the tenant's personal property was for return of her security deposit. I informed the tenant that this claim is usually made where a landlord is holding the tenant's furnishings or clothing. The tenant stated that this was not her intent and asked to amend her application to withdraw this portion of her claim. As there is no prejudice to the landlords in amending the application in this manner, the amendment was made.

Preliminary Issue – Mootness

The parties agree the tenant vacated the rental unit in early June. As the tenant has returned possession of the rental unit to the landlord, there is no need for me to consider the following issues as they are moot:

- landlord's request for an order of possession for unpaid rent;
- tenant's request to cancel the 10 Day Notice insofar as it relates to possession; and
- the tenant's request for an order to the landlord to make repairs to the rental unit.

Preliminary Issue – Prior Application

The tenant's application for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement relates to a prior application in which the tenant was awarded \$65.00. A decision in that application was rendered on 17 April 2016. The tenant was ordered to reduce her next month's rent (May) by the amount of the monetary order.

That order was a final decision of this Branch. Nothing in this decision alters the effect of that decision. Accordingly, I will not reconsider that issue; however, the award will be taken into account in determining what, if any, amount of rent was payable for May 2016.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant? Is the tenant entitled to a monetary award for the return of her pet damage and security deposits?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlords' cross claim and my findings around each are set out below.

This tenancy began 1 May 2014. The tenant testified that she vacated the rental unit on 1 June 2016. Monthly rent at the beginning of the tenancy agreement was \$1,200.00. Monthly rent increased to \$1,234.00 effective 1 February 2016. The tenancy was originally for the rental unit and the basement suite. At some point in May 2015, the tenant ceased to occupy the basement suite. At the beginning of the tenancy, the landlords collected a security deposit in the amount of \$600.00, a pet damage deposit in the amount of \$600.00, and a security deposit for the basement area in the amount of \$250.00 (the deposits).

The landlord testified that the landlords issued a 2 Month Notice on or about 28 April 2016. The 2 Month Notice was given as "all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit". The landlord testified that the 2 Month Notice set out an effective date of 1 July 2016.

On 2 May 2016, the tenant sent a text message to the landlords indicating that she might vacate by 1 June 2016. The tenant asked to apply her one month's rent compensation pursuant to subsection 51(1.1). The landlord RG responded that the landlords would agree to this if the tenant provided written notice of her intent to leave by 1 June 2016.

The tenant did not provide written notice.

On 2 May 2016 the landlords served the 10 Day Notice to the tenant in person. The 10 Day Notice set out that the tenant had failed to pay rent in the amount of \$1,169.00 that

was due on 1 May 2016. That arrears amount accounted for the \$65.00 deduction awarded in the 17 April 2016 decision.

The landlord testified that the landlords were hoping to move up the possession date on the sale of the residential property on the basis of the tenant's notice. On or about 5 May 2016, the landlords' realtor contacted the tenant to ask if she intended to vacate the rental unit on or before 1 June 2016. At that time, the tenant told the realtor that she did not intend to vacate until 1 July 2016.

The tenant testified that she did not provide written notice because she was looking for a place to move and was not sure that she would be able to provide possession as of 1 June 2016. The tenant testified that there were other reasons that she did not "want to get into" at the hearing.

The tenant testified that she vacated the rental unit on 1 June 2016. The tenant testified that the parties conducted the condition move out inspection on 2 June 2016. The landlord testified that the tenant did not vacate the rental unit until 2 June 2016.

The landlord testified that the tenant did not pay any amount towards rent for May or June.

The landlords submit that the tenant lost her right to compensation under the 2 Month Notice by breaching the tenancy agreement and failing to pay rent due 1 May 2016.

I was provided with the written tenancy agreement in respect of this tenancy. The tenancy agreement indicates that water is not included as part of rent. The landlords and tenant both agree that this is the term of the tenancy.

The landlord testified that the landlords took over management of the rental property from their property manager in January 2016. At this point, the landlords discovered that the tenants had not been paying the water utility. The landlords provided the tenant with the invoice dated 2 February 2016 and the tenant paid this amount. The tenant testified that she agreed that she was responsible for invoices from this point forward but argued that the tenant had waived collection of past invoices by failing to present them until this year.

The landlords provided me with invoices for the water utility totaling \$417.45.

The tenant claims for \$1,515.00:

Item	Amount
Pet Damage Deposit	\$600.00
Security Deposit	600.00
Basement Deposit	250.00
Past Award	65.00
Total Monetary Order Sought	\$1,515.00

The landlords claim for \$2,820.45:

Item	Amount
May Rent	\$1,169.00
June Rent	1,234.00
Water Utility	417.45
Total Monetary Order Sought	\$2,820.45

Analysis

The landlords issued a 2 Month Notice pursuant to section 49 of the Act.

Pursuant to section 50 a tenant may end a tenancy with ten days' notice where they receive a notice pursuant to section 49 of the Act:

- (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 *[landlord's use of property]* or 49.1 *[landlord's notice: tenant ceases to qualify]*, the tenant may end the tenancy early by
 - (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice...

Section 52 of the Act sets out various requirements as to the form and content of a notice to end tenancy. These requirements include that the notice be signed, dated and provide the effective date of the notice.

The tenant sent a text message indicating that she might vacate the rental unit on 1 June 2016. The landlords requested notice in the proper form and the tenant did not provide it. Further, when the realtor inquired, the tenant indicated that she did not intend to leave until 1 July 2016.

As the tenant did not ever provide a concrete effective date on which she intended to end the tenancy to the landlords as required by the Act, I find that the tenant's notice by

text message was not effective to end the tenancy early. On this basis, the tenant was responsible for her obligations under the tenancy agreement until 1 July 2016. The tenant owed rent due 1 May 2016 and 1 June 2016.

Pursuant to subsection 51 a tenant is entitled to receive the equivalent of one month's rent in compensation where a landlord issues a notice pursuant to section 49 of the Act:

- (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Pursuant to subsection 51(1.1) a tenant may withhold the last month's rent:

- (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

The landlords issued a notice pursuant to section 49 of the Act. As such, the tenant was entitled to receive compensation equivalent to one month's rent. There is nothing in the statute that disentitles the tenant to this compensation where the tenant vacates the rental unit early or where the tenant vacates the rental unit pursuant to the 2 Month Notice while the 10 Day Notice is under dispute. I find that the tenant was entitled to receive compensation equivalent to one month's rent in the amount of \$1,234.00. Pursuant to subsection 51(1.1) of the Act, the tenant was entitled to deduct this amount from her last month's rent, that is, rent due 1 June 2016.

Further, pursuant to paragraph 72(2)(b) of the Act a tenant may deduct an amount of an order of this Branch from rent due to the landlord. By way of an earlier order of this Branch, the tenant was entitled to deduct \$65.00 from rent due 1 May 2016.

Accordingly, the landlords are entitled to recover \$1,169.00 for May's rent and nothing for June's rent.

The landlords seek to recover the amount of \$417.45 in water utilities from the tenant. The landlords and tenant agree that water was not included in rent according to the tenancy agreement and was the responsibility of the tenant. The tenant argues that the landlords waived the right to collect the utility amount as they did not provide invoices until early 2016. The tenant does not point to any other conduct on the landlords' part other than the passage of time.

While the landlords did wait over a year to seek collection of the water invoices, the tenant has not shown any unequivocal act on behalf of the landlords that indicated waiver of their rights under the tenancy agreement. Accordingly, I find that the landlords are entitled to recover the claimed utility invoices totaling \$417.45.

Pursuant to paragraph 72(2)(b) of the Act, the amount of the landlords' award is offset against the amount of the deposits.

As the landlords have been successful in their application, they are entitled to recover the filing fee paid from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$236.45 under the following terms:

Item	Amount
May Rent	\$1,169.00
Utilities	417.45
Offset the Deposits	-1,450.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$236.45

Should the tenant(s) 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 30, 2016

Residential Tenancy Branch