



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application 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 and for money owed or compensation for damage or loss under the Act, *Residential Tenancy Regulation* (the "Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, *Regulation* or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord's three agents, landlord CT (the "landlord"), "landlord SS" and "landlord NS" attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses. The landlord confirmed that she is the property manager. Landlord SS and landlord NS confirmed that they are each building managers for the landlord company named in this application. All of the

landlord's agents confirmed that they had authority to represent the landlord company at this hearing.

The parties confirmed receipt of each other's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the parties were duly served with the applications.

Preliminary Issue – Amendment of Landlords' Application

The landlord confirmed that she wished to amend the landlords' application to increase her monetary claim to include July 2016 unpaid rent of \$1,250.00 total. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if he did not pay the rent or vacate the rental unit to allow it to be re-rented. Based on the undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlords' application to include a monetary claim for July 2016 unpaid rent of \$1,250.00 total.

Preliminary Issue – Additional File

The tenant testified that initially he filed an online application for dispute resolution on June 13, 2016 but failed to serve the hearing documents to the landlord. The tenant then filed an in person application on June 28, 2016. I have addressed this preliminary issue in the analysis and conclusion sections of this decision, below.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent? If not, is the tenant entitled to cancel the landlords 10 Day Notice?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested? If not, is the tenant entitled to obtain a return of all or a portion of his security deposit?

Is the tenant entitled to an order to the landlord to make repairs to the rental unit?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

Is either party entitled to a monetary order for money owed or compensation damage or loss under the *Act, Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

As per the submitted tenancy agreement and testimony of the tenant, the tenancy originally began on September 15, 2015 on a fixed term until August 31, 2016. The tenant remitted a cash security deposit in the amount of \$747.50 at the start of the tenancy. The tenant explained that this tenancy was between him and the previous building manager whom he believed represented the landlord. Shortly into the tenancy the tenant learned that the previous building manager did not represent the landlord in this tenancy but rather she represented a tenant of that particular rental unit.

In December of 2015, in an attempt to rectify the matter, the managing director requested the tenant vacate the rental unit or sign a new tenancy agreement. The tenant opted to stay and signed a new tenancy agreement. As per this submitted tenancy agreement the tenancy began January 1, 2016 on a fixed term until August 31, 2016. The tenancy agreement indicates rent in the amount of \$1,200.00 and parking in the amount of \$50.00 for a total rental amount of \$1,250.00 is payable on the first of each month. The tenant continues to reside in the same rental unit.

The tenant confirmed receipt of a 10 Day Notice dated June 4, 2016 by way of posting to his rental unit door. The 10 Day Notice indicted unpaid rent in the amount of \$1,250.00 was due on June 1, 2016. The parties agreed that the tenant paid \$1,156.00 to the landlord on June 7, 2016.

Landlord

The landlord testified that she started her role as property manager in February of 2016 and the previous building manager has been terminated for illegally subletting rental units without the landlord's knowledge.

The landlord seeks a monetary order of \$1,344.00 comprised of \$44.00 in unpaid rent for June, \$1,200.00 in unpaid rent for July and \$100.00 in unpaid parking fees for each month. The landlord further seeks to retain the tenant's security deposit in partial satisfaction of the outstanding rent.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

Tenant

As per the submitted tenancy agreement and testimony of the tenant, the original tenancy included cable vision and internet. In January of 2016, after signing the new tenancy agreement, the tenant lost his cable services and has not regained cable services to date. In May the landlord reimbursed \$44.00 for five months of lost cable in the form of a rent reduction. The tenant understood this reduction would continue each month thereby reducing his rent to \$1,156.00. Based on this understanding the tenant withheld \$44.00 from June's rent. The tenant also withheld \$50.00 in parking from June's rent, based on a verbal conversation with the landlord. The tenant testified that because his car was broken into multiple times the landlord agreed to reimburse the tenant the \$50.00 parking fee. The landlord failed to reimburse the \$50.00 parking fee so the tenant withheld it from June's rent.

In an effort to maintain his tenancy the tenant provided two cheques to the landlord on June 27, 2016. He provided one cheque in the amount of \$94.00 for June rent/parking and the other cheque in the amount of \$1,250.00 for July rent/parking. The landlord refused to take the cheques dictating that the cheques needed to be certified. The cheques have not been cashed to date.

The tenant testified that although the original tenancy agreement with the previous building manager indicated rent was \$1,495.00, in actuality he paid \$1,495.00 plus a \$50.00 parking fee for the month of September and \$1,500.00 in rent plus a \$50.00 parking fee for October, November and December. The tenant testified he learned from the main tenant and the managing director that the main tenant of his particular rental unit was only paying \$900.00 a month for rent and parking. The tenant seeks a monetary order in the amount of \$2,595.00 for the "overpayment" in rent and parking for those four months. The tenant described the "overpayment" as the difference between the \$900.00 the main tenant paid and monthly rent and parking he paid.

It is the tenant's position that at the start of the new tenancy, he remitted a \$600.00 security deposit cheque on the condition it would not be cashed until he received his \$747.50 security deposit from the previous building manager. Despite this agreement, the \$600.00 security deposit cheque was cashed yet later reimbursed to the tenant. The tenant then provided another \$600.00 security deposit cheque to landlord SS and landlord NS. The tenant testified that this second cheque has not been cashed to date and the \$747.50 cash security deposit has not been returned to him. The tenant is

seeking the return of his original security deposit in the amount of \$747.50 at which time the landlord may cash his \$600.00 cheque.

The tenant is seeking an order for the landlord to repair the dripping faucets in both the bathroom and kitchen that he previously reported to the landlord in February.

The tenant is seeking an order for the landlord to provide internet and cable as per the original tenancy agreement.

Landlords' reply

The landlord acknowledged that May's rent was reduced to compensate the tenant for five months of lost cable, as the new tenancy reflected cable was included in rent. The landlord contended that in May of 2016, the landlord instructed the tenant to contact the cable service provider to acquire a cable box and provide the landlord name to obtain cable. In providing the landlords' name to the cable provider, the landlord explained the landlord will incur the cost of the cable. The landlord did not reply to the tenant's allegation that an agreement was made to reduce June's rent for parking.

The landlord does not deny receipt of the two cheques on June 27, 2016, nor does the landlord deny advising the tenant to provide certified cheques. The landlord explained that because the preauthorized debit for July's rent and parking was returned insufficient funds the landlord required certified cheques to ensure payment would be processed. The landlord acknowledged that despite trying to return the cheques to the tenant, both cheques are still in the landlord's possession.

In regards to the security deposit, the landlord testified that because they have not received the \$747.50 security deposit from the previous building manager they have not cashed the \$600.00 cheque.

The landlord testified that the bathroom faucet was inspected by a plumber who reported it could not be fixed but rather required replacement. The landlord testified that at the end of June an order was made to replace all rental unit bathroom sinks and faucets. The landlord estimated delivery and installation will commence next month. The landlord was not aware of the issue with the kitchen sink. The landlord testified that although the original tenancy with the previous building manager may have included internet services, the new tenancy agreement did not.

Tenant Reply

The tenant acknowledged being told by the landlord to call the cable server provider to obtain a cable box.

Analysis

Landlord

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. Although the tenant filed an original application within five days, based on the tenant's own admission, the tenant did not serve the landlord the corresponding hearing notices to the landlord. Subsequently the tenant filed another application, however not within the five days. I find the tenant's failure to provide the hearing notice in relation to his original application does not negate his ability to contest the 10 Day Notice as hearing notices were serviced in accordance with the second application.

The parties provided undisputed testimony that the tenant paid a partial rent payment within five days and attempted to pay the remaining outstanding rent on June 27, 2016, well past the five days of receiving the 10 Day Notice. As the tenant did not pay the full rent within five days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I dismiss the tenant's application to cancel the 10 Day Notice and find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

The tenant's original tenancy ended by way of signing the new tenancy agreement with the landlord on January 1, 2016. Thereby all terms and services included in the original tenancy do not pertain to the new tenancy agreement. In accordance with the new tenancy agreement, rent in the amount of \$1,200.00 and parking in the amount of \$50.00 for a total rent of \$1,250.00 is payable on the first of each month. As per the new tenancy agreement rent includes cable but not internet services.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, whether or not the landlord complies with the *Act*. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

As per section 27 of the *Act*, a landlord is obligated to provide services in accordance with the tenancy agreement and if the landlord terminates or restricts this service the tenant is entitled to a rent reduction. Despite the landlord's position that it is the tenant's responsibility to obtain this service, I find the landlord failed in her responsibility to provide cable, a service included on the tenancy agreement, for the month of June and July. As the landlord failed to provide the service or reduce June and July rent for this loss of service, I order the landlord to reduce each of these two months' rent by \$44.00 to compensate the tenant. Therefore I find that the current total rent for this unit is \$1,206.00.

Despite receiving cheques for June and July rent, I find the landlord provided undisputed evidence that they did not cash the cheques and find the landlord is entitled to a monetary order of \$1,256.00 in rent. If the landlord cashes the cheques previously received from the tenant they must deduct those amounts from the monetary order.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to cash the \$600.00 security deposit cheque in partial satisfaction of the monetary award. Again, if the landlord cashes the security deposit cheque previously received from the tenant they must deduct that amount from the monetary order. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,356.00.

Tenant

As per the finding above that the original tenancy ended in signing the new tenancy on January 1, 2016, I find the tenant is not entitled to a monetary order for an "overpayment." I further find that the tenant is not entitled to the return of his original security deposit in the amount of \$747.50 from this landlord, as this landlord does not retain that security deposit and it's in relation to a separate tenancy.

Based on the landlord's testimony that repairs to the bathroom are to be conducted next month, after this tenancy is set to end, I find the tenant is not entitled to an order for repairs for the bathroom sink. In addition I find the tenant is not entitled to an order for the landlord to repair the kitchen sink as the tenancy is set to end within two days.

I find that internet was not part of the new tenancy agreement and the tenant will be reimbursed in the form of rent reduction for the loss of cable service. Accordingly I find the tenant is not entitled to an order for the landlord to provide services or facilities required by law.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

I grant an order of possession to the landlord effective two (2) days after service on the tenant.

I issue a monetary order in the landlord's favour in the amount of \$1,356.00 against the tenant.

The tenant's entire application is dismissed without leave to reapply.

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: July 27, 2016

Residential Tenancy Branch