



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, FF; MT, CNR

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 damage to the rental unit pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the Act for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66; and
- cancellation of the landlord's 10 Day pursuant to section 46.

The tenant did not attend this hearing, although I waited until 1111 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenant with the dispute resolution package on 15 June 2016 by registered mail. The landlord provided me with a Canada Post tracking number that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlord testified that he served the tenant with the dispute resolution amendment on 27 June 2016 by registered mail. The landlord provided me with a Canada Post tracking number that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlord testified that he served the tenant with the 10 Day on 2 June 2016 by posting that notice to the tenant's door. On the basis of this evidence, I am satisfied that the tenant was deemed served with the 10 Day Notice pursuant to sections 88 and 90 of the Act.

Preliminary Issue – Scope of Hearing

At the hearing the landlord informed me that the tenant vacated the rental unit on or about 10 July 2016. The landlord asked to withdraw his claim for an order of possession as possession has already returned to the landlord. On the basis that there is no prejudice to the tenant in permitting this amendment, the landlord's application is amended to withdraw the application for an order of possession.

As the tenant has vacated the rental unit, her application for dispute resolution is now moot. As such, I decline to consider the tenant's application.

The landlord makes a claim for compensation for damage to the rental unit. This constitutes a claim for compensation for breach of subsection 37(2) of the Act, which governs the condition in which a tenant must leave a rental unit at the end of tenancy.

The tenant vacated the rental unit on or about 10 July 2016. This is when the landlord's claim for cleaning costs crystallised. As the landlord could have not known in what state the rental unit would be left until that time. The landlord made his application 12 June 2016. The hearing of this matter occurred 13 July 2016. As such, at the time of the application the landlord's claim had not yet crystallised and insufficient time had elapsed from the end of the tenancy to allow for compliance with the Residential Tenancy Branch Rules of Procedure. For these reasons, I dismiss the landlord's claim for damage to the rental unit on the basis that it is premature. The landlord is at liberty to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

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

This tenancy began 15 December 2015. The tenant vacated the rental unit 10 July 2016. Monthly rent in the amount of \$850.00 was due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$425.00, which was collected at the beginning of this tenancy.

On 2 June 2016, the landlord issued the 10 Day Notice. The 10 Day Notice set out an effective date of 15 June 2016. The 10 Day Notice set out that the tenant failed to pay rent in the amount of \$850.00 that was due 1 June 2016. The tenant applied to dispute this notice, but vacated the rental unit prior to a hearing on the merits.

The landlord testified that he last received payment towards rent from the tenant on or about 26 April 2016, which included May's rent. The landlord testified that the tenant did not make any payment towards June or July's rents. The landlord testified that he is not aware of any reason that would entitle the tenant to deduct any amount from rent.

On 10 July 2016, the tenant informed the landlord that she was vacating the rental unit that day. The landlord testified that the rental unit was left unclean and damaged. The landlord testified that he is unable to rent the unit for the remainder of this month.

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

There is no evidence before me that indicates the tenant was entitled to deduct any amount from rent. Accordingly, the tenant owed rent due 1 June 2016 and 1 July 2016. On the basis of the landlord's uncontested evidence, the tenant failed to pay rent due on 1 June 2016 and 1 July 2016. I find that the landlord is entitled to recover the full amount of the rent arrears: \$1,700.00.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in this application, he is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord's claim for an order of possession is withdrawn. I decline to consider the tenant's application as the issues raised are moot.

The landlord's claim for damages is dismissed with leave to reapply as the application was premature.

I issue a monetary order in the landlord's favour in the amount of \$1,375.00 under the following terms:

| Item | Amount |
|---|-------------------|
| Unpaid June Rent | \$850.00 |
| Unpaid July Rent | 850.00 |
| Offset Security Deposit Amount | -425.00 |
| Recovery of Filing Fee for this Application | 100.00 |
| Total Monetary Order | \$1,375.00 |

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. 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: July 13, 2016

Residential Tenancy Branch