



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, MNR, FF

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on July 31, 2016 for:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on August 12, 2016 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

The Landlord submitted that its last name is that contained in the Landlord's application and not the name as set out in the Tenant's application. The Tenant agrees that the Tenant's application setting out a different last name for the Landlord is wrong and that the Landlord's last name should be as stated by the Landlord. Given this evidence I correct the style of cause to set out the Landlord's last name as provided by the Landlord.

The Parties confirmed that the Tenant has moved out of the unit and the Landlord has possession of the unit. As a result I dismiss the claims for a cancellation of the notice to end tenancy and for the order of possession. The Landlord confirms that its application does not include a monetary claim for unpaid rent.

Both Parties amended their application. The Landlord amended its application to claim the security deposit. The Tenant amended its application to include claims for compensation for damages or losses.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed. As the Landlord's amended application to include a claim to retain the security deposit is not related to the matters in the original application I dismiss that claim with leave to reapply. As the Tenant's amended application to include a claim for compensation for damage or loss is not related to the dispute of the notice to end tenancy, I dismiss this claim with leave to reapply.

As the Tenant chose to move out of the unit and not dispute the notice to end tenancy I decline to award the Tenant with recovery of the filing fee.

In order to obtain an order of possession, the Landlord did not have to make an application in response to the Tenant's application to cancel the notice. I therefore decline to award recovery of the Landlord's filing fee.

The Landlord states that the Tenant is required to pay a percentage amount of the garbage as the tenancy agreement does not include garbage removal with the rent. The Landlord states that the rental unit was purchased by the Landlord and possession was taken on July 1, 2016. The Landlord claims half of the garbage fees for July and August 2016. The Tenant states that since the onset of the tenancy no garbage fees were ever payable. The Tenant states that the exclusive use of a garbage bin was never provided to the Tenant and that the Tenant shared one bin with the 2 other rental units.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if, inter alia, the term is not expressed in a manner that clearly communicates the rights and obligations under it.

As nothing in the tenancy agreement indicates that the Tenant must pay any amount of the cost of garbage collection and given the Tenant's undisputed evidence that no garbage fee was ever collected or payable I find that the Landlord has not substantiated that the Tenant has breached any part of the tenancy agreement or Act. I dismiss the claim for garbage fees.

Conclusion

The Landlord's original application is dismissed. The Landlord's claim in relation to the security deposit is dismissed with leave to reapply.

The Tenant's original application is dismissed. The Tenant's claim in relation to compensation is dismissed with 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: September 21, 2016

Residential Tenancy Branch

