



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF; CNR, CNL, MNR, MNDC, ERP, AAT, LAT

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 pursuant to section 67;
- 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;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Landlord Use (the "2 Month Notice") pursuant to section 49;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- an order authorizing the tenant to change the locks to the rental unit.

Both the landlord and tenant attended the hearing and were represented by agents. At the outset of the hearing, the landlord and landlord's agent (collectively the "landlord"), the tenant and tenant's agent (collectively the "tenant") confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issue – Tenant's Application

The tenant clarified that she was only seeking to cancel the 2 Month Notice and for an order of compensation for damage to her furniture. The tenant explained that she did not receive a 10 Day Notice and therefore is not seeking to cancel it. Although the tenant testified that she did not receive the 10 Day Notice, on August 3, 2016 the tenant submitted a written amendment to her application to dispute a 10 Day Notice issued to her on August 1, 2016. For this reason I find the tenant is still seeking to cancel the 10 Day Notice, dated August 1, 2016

The tenant testified that due to a language barrier the tenant applied for the other claims in error. Accordingly these remaining claims are dismissed.

Preliminary Issue – Amendment of Landlords' Application

The landlord confirmed that he wished to amend the landlord's application to increase his monetary claim to include September 2016 unpaid rent of \$750.00. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if she 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 landlord's application to include a monetary claim for September 2016 unpaid rent of \$750.00 total.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord authorized to recover the filing fee for this application from the tenant?

Should the landlord's 2 Month Notice be cancelled?

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

Background and Evidence

Both parties testified that this tenancy was based on a verbal agreement; a written tenancy agreement does not exist. As per the testimony of the parties, the tenancy began in April 2016 on a month-to-month basis. Rent in the amount of \$750.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$375.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

A clogged kitchen sink in the rental unit in June 2016 created water damage. New flooring was installed in July 2016.

On July 26, 2016 the landlord issued the 2 Month Notice, indicating that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member. The tenant confirmed personal receipt of this 2 Month Notice.

Although the tenant denied receiving a 10 Day Notice, her amendment indicates she confirmed receipt of a 10 Day Notice dated August 1, 2016. The landlord testified that after consultation with the Residential Tenancy Branch, the landlord served a second 10 Day Notice, dated August 2, 2016, on the same date, by way of posting to the rental unit door where the tenant resides. The landlord provided a signed, witness proof of service. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's second 10 Day Notice on August 5, 2016, three days after its posting.

Landlord

The landlord testified that he issued the 2 Month Notice because he plans to reside in the rental unit along with his wife.

The landlord seeks a monetary order of \$2,250.00 for unpaid rent from July 2016 to September 2016. The landlord testified that he regularly issued receipts for cash rent payments and has provided copies of receipts until June 2016. The landlord testified that the tenant has made no rent payment since June 2016. The landlord provided a witness statement from the individual that witnessed the serving of both 10 Day Notices. The statement indicates that in response to the first 10 Day Notice on August 1, 2016 the tenant told the landlord she was not going to pay rent and intended to take the landlord to court.

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

Tenant

The tenant suggested the 2 Month Notice was issued in response to the tenant asking the landlord for compensation for her damaged couch. The tenant alleged her couch was damaged from water, mice and the floor installation crew. The tenant seeks \$3,948.00 to replace her couch. The tenant has provided an estimate in replacement costs from a furniture company.

The tenant testified that she paid rent in cash for July, August and September and was not issued receipts from the landlord.

Analysis

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.

Landlord

In relation to unpaid rent, I prefer the testimony of the landlord. The submitted rental receipts are congruent with the landlord's testimony that rent was only paid to June 2016 and the submitted witness statement establishes that the tenant had no intention to pay rent. The tenant has provided insufficient evidence to rebut the witness statement or substantiate July, August and September rent was paid. Based on the landlord's testimony and witness statement, I find the tenant did not pay the outstanding rent.

Based on the landlord's testimony and the 10 Day Notice before me, I find that the tenant was served with an effective notice. As the tenant did not pay the overdue rent or file an application to dispute the notice dated August 2, 2016, 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 find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires a tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. 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.

I find that the landlord proved that the current rent for this unit is \$750.00. I find the landlord provided credible evidence that the tenant failed to pay full rent from July 2016 to September 2016. Therefore, I find that the landlord is entitled to \$2,250.00 in rent.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$375.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,875.00. 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 \$1,975.00.

Tenant

As a finding had been made in relation to the 10 Day Notice and the tenancy is set to end, I am not obligated to make a finding on the 2 Month Notice and dismiss this portion of the tenant's claim.

In respect to a monetary claim for damages or for a monetary loss to be successful an applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimized the claimed loss.

The tenant had provided insufficient evidence to show the couch was damaged or that it was a result of the landlord's violation of the *Act*. The pictures submitted are not reliable, they are contorted and blurry. The invoice submitted is an estimate in replacement of multiple furniture pieces; the tenant has not incurred any cost as she has not replaced the couch to date. For these reasons, I dismiss the tenant's application for compensation in the amount of \$3,948.00.

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 \$1,975.00 against the tenant.

The tenant's 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: September 12, 2016

Residential Tenancy Branch