



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF; CNR, MNR, MNDC, MNSD, OLC, RR, ERP, 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* ("*Regulation*") or tenancy agreement pursuant to section 67; and
- 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;
- 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*, *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 requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenant DH (the “tenant”) and the landlord attended the hearing. At the outset of the hearing, each party 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 Matter

At the outset of the hearing the tenant testified that the tenants vacated the rental unit on August 25, 2016. Consequently, the tenant is no longer seeking to cancel the 10 Day Notice and this portion of the tenant’s application is dismissed without leave to reapply. As the tenancy is ended and as a landlord’s compliance may only be sought in relation to an ongoing tenancy I dismiss this claim as well. Additionally because the tenancy has ended, I dismiss the tenant’s claim for an order for the landlord to make emergency repairs.

The landlord, who does not reside in the vicinity of the rental unit, testified that she was unaware that the tenants had vacated the rental unit on August 25, 2016. The landlord still seeks an order of possession.

Section 52 of the *Act* establishes that in order to be effective, a notice to end tenancy must be in writing and must be signed and dated by the landlord giving the notice. Based on the notice before me, which remains unsigned by the landlord, I find the tenants were not served with an effective notice. Due to the ineffective notice, I find the landlord is not entitled to an order of possession.

Issue(s) to be Decided

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

Is the tenant entitled to a monetary order for the cost of emergency repairs to the rental unit?

Is the tenant authorized to obtain a return of all or a portion of her security deposit?

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

Is either party authorized to recover the filing fee for this application?

Background and Evidence

On June 20, 2016 the parties signed a written tenancy agreement. As per the submitted tenancy agreement the tenancy began on June 20, 2016 on a month to month basis. Rent in the amount of \$750.00 was payable on the 15th of each month. The tenant provided an e-transfer in the amount of \$750.00 to the landlord on June 20, 2016.

Tenant

It is the tenant's position that the parties agreed that the tenant would clean and repair the rental unit in exchange for July rent. The tenant testified that the landlord requested \$750.00 for the security deposit and the tenant paid this amount via email transfer on June 20, 2016. The tenant acknowledged she did not pay July 2016 rent instead she submitted receipts to the landlord. In response, the tenant received a 10 Day Notice for outstanding rent in the amount of \$750.00 and unpaid security deposit in the amount of \$375.00 due July 15, 2016. The tenant testified she sent an email transfer in the for August rent, but the landlord denied the payment. The tenant has submitted copies of text messages between the landlord and tenant.

The tenant seeks \$364.34 in damages. The tenant seeks reimbursement in the amount of \$8.41 that she spent on paint supplies. The tenant also seeks to recover \$81.42 in fuel costs she incurred as a result of bringing multiple loads of garbage and refuse to the dump. The tenant testified that the rental unit did not contain a front door, bathroom door or bedroom door. The tenant purchased replacement doors and paint in the amount of \$274.51 and seeks to recover this cost from the landlord. The tenant has submitted receipts for each of the claims stated above.

The tenant is also seeking to recover the \$100.00 filing fee for this application from the landlord and photocopying costs in the amount of \$38.00 for documents used for the hearing process.

Landlord

The landlord disputed there was an agreement between the parties for the tenant to conduct repairs in exchange for rent. The landlord's witness testified there was an agreement for the tenant to clean up the rental unit, however not in exchange for rent. The landlord's witness testified that the parties agreed the tenant would make the rental

unit “livable by cleaning up the inside and repairing the outside door.” The tenant was to communicate to the landlord before commencing any further repairs for approval, and if approved the landlord would reimburse the tenant costs as indicated on submitted receipts. The witness was present for the signing of the tenancy agreement and subsequent conversations between the landlord and tenant. The landlord acknowledged receipt of the \$750.00 e-transfer payment on June 20, 2016 however she contends this payment was June rent, not the security deposit.

The landlord seeks a monetary order of \$2,250.00 for unpaid rent from July 2016 to September 2016. The landlord claimed that the tenant did not pay any rent for the above three months.

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

Analysis

Tenant

The landlord disputes an agreement was made with the tenant to provide repairs in exchange for rent. In the submitted tenancy agreement a handwritten clause reads;

Renter satisfied with condition of the house. Renter provide quote for cost of renovation.

This clause is initialed by the tenant. This clause infers the tenant was to provide a quote for any repairs or renovations. A quote typically refers to providing the cost of a service before it commences. In this situation, the parties did not provide any testimonial or documentary evidence that the tenant provided any quotes prior to repairs. Instead both parties testified that repairs were completed and receipts submitted to the landlord after completion. I find the agreement between the parties was for the tenant to provide a quote for repairs, not provide repairs in exchange for rent.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

Based on the parties' testimony I am satisfied that the rental unit was not "livable" and required repairs to make it suitable for occupation by the tenant. For this reason I award a nominal award in the amount of \$300.00 in recognition of the landlord's contravention of the *Act*.

The parties have provided conflicting testimony in relation to the June 20, 2016 \$750.00 e-transfer payment. The submitted tenancy agreement indicates the tenant was required to pay a \$750.00 security deposit and in a submitted text message the landlord requests a deposit in the amount of \$750.00. Based on this I find the June 20, 2016 \$750.00 payment was in fact the security deposit.

Section 19 of the *Act* allows a landlord to collect a security deposit from a tenant in an amount not exceeding $\frac{1}{2}$ of one month's rent payable under the tenancy agreement. Based on the evidence before me, I find the tenant is entitled to deduct the overpayment of \$375.00 towards June 2016 rent.

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit.

During the hearing, the tenant testified that the landlord knew her forwarding address as it was a PO Box that remained unchanged. In the absence of a letter and specific date that a forwarding address was sent, I find the tenant has not met the burden of separate written notice. Accordingly, I dismiss this portion of the tenant's claim.

I dismiss the tenant's claim of \$38.00 for photocopying used in preparation for this hearing process, as the only hearing-related costs recoverable under section 72 of the *Act* are for filing fees.

Landlord

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.

I find that the landlord proved that the current rent for this unit is \$750.00. I find the landlord provided undisputed evidence that the tenants failed to pay full rent from July

2016 to September 2016. Based on the tenant's testimony I find the tenants vacated the rental unit on August 25, 2016 and therefore are not obligated to pay September rent. For these reasons, I find the landlord is entitled to \$1,500.00 in rent for July and August.

Set Off of Claims

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 \$1,500.00 monetary award and I grant an order for the balance due \$1,125.00.

As I found the tenants are entitled to a \$300.00 nominal award, I set off the amount owed ($\$1,125.00 - \$300.00 = \$825.00$) and order, pursuant to section 67 of the *Act*, that the tenants pay the landlord the sum of \$825.00.

In relation to the filing fees paid for the cost of these applications I find both parties were in breach of the *Act*, and therefore do not award compensation for their filing fees.

Conclusion

After setting off the claims made against each other and accounting for the security deposit paid, I find the tenants owe the landlord **\$825.00**, and a monetary order has been granted to the landlord in those terms.

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: October 5, 2016

Residential Tenancy Branch