



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNDS, FF; CNR, MNDC, OLC, ERP, RP, PSF, RPP, LRE, OPT, AAT, LAT, RR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*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; 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 compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- 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;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order of possession of the rental unit pursuant to section 54;
- 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;
- authorization to change the locks to the rental unit pursuant to section 70; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and

The tenant and 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.

Rule 2.3 of the RTB *Rules of Procedure* states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would end pursuant to the landlord's 10 Day Notice. I have addressed the remainder of the parties' claims in the analysis and conclusion sections of this decision, below.

Issue(s) to be Decided

Should the landlord's 10 Day Notice dated October 1, 2016, be cancelled? If not, is the landlord entitled to an order of possession?

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 order requested?

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

Background and Evidence

The landlord testified that he has a two-bedroom rental unit in the lower level of his personal residence. The landlord explained that he rented out each of the two bedrooms to separate tenants. The landlord submitted two tenancy agreements, one for each tenant, neither of whom is the tenant named in this application. The parties agreed that the landlord and tenant named in this application entered into a verbal tenancy agreement on June 6, 2016 in which the tenant was to provide a \$200.00 security deposit and pay rent in the amount of \$400.00 each month. The tenant continues to reside in the rental unit with the two tenants named in the separate tenancy agreements.

The documentary evidence shows the tenant was issued a series of 10 Day Notices, with the last being issued in October of 2016.

The landlord testified that on October 4, 2016 he left a copy of the 10 Day Notice, dated October 1, 2016 at the rental unit with an adult who lived with the tenant. In accordance with section 89

of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on October 4, 2016, the day it was served.

The landlord seeks a monetary order of \$1,550.00 for unpaid rent from June 2016 to October 2016. The landlord claimed that the tenant paid a total of \$450.00 in rent for the above five months and never paid the security deposit. The landlord submitted copies of receipts issued to the tenant for the above payments.

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

The tenant testified that he paid the \$200.00 security deposit in cash to the landlord on June 24, 2016. The tenant testified he was not issued a receipt for this payment. The tenant testified that he paid \$400.00 in cash to the landlord every month.

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.

Although the tenant contends that he has paid rent every month, I find he has provided insufficient evidence to substantiate this. The landlord has provided copies of three receipts, one for each of the three payments the landlord testified the tenant has made. The series of 10 Day Notices issued to the tenant are consistent with the landlord's testimony that the tenant failed to pay rent. For these reasons, I find the tenant has not proven beyond a reasonable doubt that full rent was paid from June to October 2016. Therefore, 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*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. 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 \$400.00 and that the tenant failed to pay full rent from June 2016 to October 2016. In relation to the security deposit, the tenant testified he paid \$200.00 on June 24, 2016 and was not issued a receipt. Contrary to this, the landlord submitted a receipt dated June 24, 2015 for a payment of \$50.00 for June rent and deposit. The remaining two receipts submitted by the landlord indicate both payments were for June rent and deposit. Based on the receipts I find the landlord received a total of \$400.00 for rent and \$50.00 towards the \$200.00 deposit. Therefore, I find that the landlord is entitled to \$1,600.00 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 amount of \$50.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,550.00. 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 \$1,650.00.

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 \$1,650.00.

The landlord's application for a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed with leave to reapply.

The tenant's claim to dismiss the landlord's 10 Day Notice is dismissed without leave to reapply.

The remainder of the tenant's claim 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: October 17, 2016

Residential Tenancy Branch