



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MNSD, OPR, CNR, FF, MNDC, MNSD, OLC, PSF

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated October 2, 2016
- b. A monetary order in the sum of \$587.50.
- c. An order for the return of the security deposit.
- d. An order that the landlord comply with the Act, regulation and/or the tenancy agreement
- e. An order that the tenant recover the cost of the filing fee

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$2210.00 for unpaid rent and damages
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was served on the Tenant by posting on October 2, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing and the Amendment was served on the Tenant by registered mail. I find that the Application for Dispute Resolution filed by the Tenant was served on the landlord by mailing, by registered mail to where the landlord resides. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated October 2, 2016?
- b. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement?
- c. Whether the tenant is entitled to a monetary order and if so how much?
- d. Whether the Tenant is entitled to recover the cost of the filing fee?
- e. Whether the landlord is entitled to an Order for Possession?
- f. Whether the landlord is entitled to A Monetary Order and if so how much?
- g. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- h. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on June 1, 2015. The tenancy was renewed for another year ending May 31, 2017. The present rent was \$975 plus \$75 utilities month payable in advance on the first day of each month. The tenant paid a security deposit of \$487.50 at the start of the tenancy. The tenant paid a security deposit of \$487.50 at the start of the tenancy.

The tenant is a victim of domestic violence. On August 22, 2016 the tenant left the rental unit with her young children and moved to a transition house. Her partner remained in the rental unit. The rent was paid for September. However, the tenant failed to pay the rent for October. Her partner vacated the rental unit on October 12, 2016. The landlord removed the tenant's belongings and put them in storage. The tenant has since retrieved those belongings. The landlord was able to re-rent the rental unit for November 1, 2016.

Tenant's Application:

I dismissed the tenant's application for an Order to cancel the 10 day Notice to End Tenancy. The tenant abandoned the rental unit and has no interest in reinstating the tenancy. The Notice was on the approved form and rent was owed at the time it was served.

I dismissed the tenant's application for a monetary order. At the hearing the tenant's agent stated she was requesting reimbursement of the \$100 paid for carpet cleaning. There is no basis for this claim as the landlord did not include the cost of carpet cleaning in his claim and it is the tenant's obligation to clean the carpet at the end of a tenancy.

The Monetary Order worksheet filed by the tenant claimed the cost of the filing fee and three registered mail or express post charges. I dismissed these claims. An arbitrator does not have the jurisdiction to award registered mail and express post charges as these items refer to the cost of litigation. The tenant has not been successful and is not entitled to reimbursement of the cost of the filing fee.

In summary I ordered that the tenant's application be dismissed without leave to re-apply.

Landlord's Application:

It is not longer necessary to consider the landlord's application for an Order for Possession as the landlord has regained possession of the rental unit.

Analysis - Monetary Order and Cost of Filing fee:

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord is entitled to \$975 plus \$75 for utilities for the month of October for a total of \$1050. The tenant's belongings remained in the rental unit for much of that time. The landlord was not able to re-rent it and suffered a loss of rent for that month. The tenant failed to give the landlord sufficient notice to end the tenancy.
- b. The landlord claimed the sum of \$960 for the cost of removing the tenant's belongings. I accept the submission of the landlord that the landlord acted reasonably in removing the tenant's belongings into storage. However, the evidence presented by the landlord is not sufficient to prove the amount claimed. The two workers did not testify. The landlord did not produce an invoice from them that had sufficient detail to justify the claims. The landlord testified there was a lot of belongings but failed to provide photographs to prove this claim. I determined the amount charged (\$40 per hour) is excessive for the type of work that was done. I determined the landlord is entitled to \$600 of this claim.
- c. I dismissed the landlord's claim of \$200 for storage. The goods were stored on the rental property. The landlord failed to prove this is a reasonable charge.

In summary I granted the landlord a monetary order in the sum of \$1650 plus the sum of \$100 in respect of the filing fee for a total of \$1750.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$487.50. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1262.50.

Conclusion:

I ordered that the Tenant's application be dismissed without leave to re-apply. I determined the landlord had established a claim against the Tenant in the sum of \$1750. I ordered that the landlord shall retain the security deposit of \$487.50. I further ordered that the Tenant pay to the Landlord the sum of \$1262.50

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the 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 section 9.1(1) of the Residential Tenancy Act.

Dated: December 02, 2016

Residential Tenancy Branch