



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding CASTERA INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDS, FF, CNR, DRI, MNDC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed an Application requesting an order of possession due to unpaid rent and is seeking a monetary order to recover unpaid rent and /or utilities and to keep all or part of the security deposit or pet deposit; and to recover the cost of the filing fee.

The Tenant filed an Application to cancel a 10 Day Notice To End Tenancy for Unpaid Rent; to dispute a Notice of Rent Increase; and is seeking a monetary order for money owed for compensation for damage or loss under the Act, Regulation or tenancy agreement.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the start of the hearing, the parties confirmed that they exchanged each other's evidence that I have before me. After the hearing ended I received an additional 15 pages of documentary evidence that the Residential Tenancy Branch received from the

Tenant on March 3, 2017. This late evidence was not before me during the hearing, and was not considered.

The parties were informed of an opportunity to settle the dispute under section 63 of the Act; however a settlement agreement could not be reached.

Section 2.3 of the Residential Tenancy Rules of Procedure gives an Arbitrator the authority to dismiss unrelated claims with or without leave to reapply. The Tenant's application contains a request to cancel a notice to end tenancy and also contains a request for monetary compensation for money owed or compensation for damage or loss.

Since the most important issue to be determined is whether or not the tenancy has ended, the Tenants claim for compensation is dismissed with leave to reapply.

At the end of the hearing the Tenant requested an adjournment. The Tenant stated he wanted more time to look into some issues or to seek counsel. The Tenant's request for an adjournment was denied. The Landlord is seeking an order of possession of the rental unit due to unpaid rent and will suffer additional losses if an adjournment is granted. The Tenant testified that he received the 10 Day Notice to End Tenancy on February 2, 2017. I find that the Tenant has had sufficient time to prepare for the hearing.

Issues to be Decided

- Did the Tenant pay the outstanding rent within 5 days of receiving the 10 Day notice?
- Should the 10 Day Notice be cancelled?
- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Can the Landlord keep the security deposit in partial satisfaction of unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Parties testified that the tenancy began on May 1, 2016, as a one year fixed term tenancy. Rent in the amount of \$800.00 was due on the first day of the month. The Tenant paid the Landlord a security deposit of \$400.00. The Landlord provided a copy

of the tenancy agreement. The tenancy agreement states there is a \$35.00 fee for NSF cheques.

The Landlord testified that the Tenant has a history of not paying the rent when it's due. The Landlord testified that previously, the parties entered into a payment schedule to allow the Tenant to make payments to get caught up on the rent. The Landlord provided copies of the letters from the Tenant where he agrees to make rent payments according to a schedule.

The Landlord submitted that they have tried to work with the Tenant by allowing a payment plan but the Tenant failed to keep up with his rent payments. The Landlord issued the Tenant a 10 Day Notice.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2017 ("the Notice").

The Notice states that the Tenant has failed to pay rent in the amount of \$1,720.00 which was due on February 1, 2017. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant testified he received the 10 Day Notice from the Landlord on February 2, 2017.

The Landlord testified that they did not receive the \$1,720.00 owed by the Tenant within five days of issuing the 10 Day Notice. The Landlord testified that they have not received any rent money from the Tenant since the 10 Day Notice was issued.

The Landlord testified that as of November 1, 2016, the Tenant owed the Landlord \$1,305.00 comprised of November 2016, rent and \$505.00 of payments in arrears. The Landlord testified that since November 1, 2016, the Tenant made the following payments towards rent:

November 24, 2016	\$600.00
November 28, 2016	\$392.50
December 14, 2016	\$200.00
December 21, 2016	\$400.00
January 20, 2017	\$392.50
Total	\$1,985.00

The Landlord provided a copy of a ledger which provides the payments the Landlord received from the Tenant.

The Tenant testified that he agrees with most of what the Landlord testified about regarding the amount of rent that is owed. The Tenant submitted that back in August

2016, he confirmed with the Landlord that only \$800.00 would be processed and the resulting NSF charge caused him to fall behind after that point.

The Tenant testified that he recently offered to pay the Landlord the full rent that is in arrears including NSF fees.

The Landlord seeks an order of possession and a monetary order in the amount of \$2,520.00.

The Landlord is seeking to retain the security deposit of \$400.00 in partial satisfaction of the unpaid rent.

The Tenant is seeking to cancel the 10 Day Notice.

Analysis

Section 26 of the Act states:

a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

I accept the Landlord testimony that the Tenant has failed to pay the rent owing under the tenancy agreement. I find that the Tenant did not pay the rent of \$1,720.00 within five days of receiving the 10 Day Notice, and the Tenant did not have authority to withhold payment of the rent.

The Tenant's submission that an improper \$35.00 NSF charge in August 2016, caused him to fall behind paying the rent does not account for the amount of rent that the Tenant owed on February 1, 2017.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the tenancy agreement requires the Tenant to pay the Landlord \$800.00 per month. For the five month period from November 2016, to March 2017, the Tenant owes the Landlord \$4,000.00 for rent. I accept the Landlord's evidence of the payment ledger that shows rent payments received from the Tenant. I find that the Tenant has only paid the Landlord \$1,985.00 for rent for the above five month period.

After setting off the payments made of \$1,985.00, I find that the Tenant owes the Landlord \$2,015.00, for rent for the five month period. In addition I find that the Tenant owed \$505.00 in arrears for unpaid rent and NSF charges for previous months.

I find that the Tenant owes the Landlord a total amount of \$2,520.00 for unpaid rent and NSF charges.

I order that the Landlord can keep the security deposit in the amount of \$400.00 in partial satisfaction of the Landlord's claim for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$2,620.00 comprised of \$2,520.00 in unpaid rent and NSF fees and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$400.00 towards the claim of \$2,620.00, I find that the Landlord is entitled to a monetary order in the amount of \$2,240.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

The Tenant applied to dispute a Notice of Rent Increase he received from the Landlord but the Tenant did not make any submissions regarding the Notice during the hearing.

The Landlord testified that the rent increase does not take effect until May 1, 2017.

I have reviewed the Notice of Rent increase. I find that the Landlord used the proper form and is increasing the rent by an allowable amount that was set to take effect 12 months after the date the existing rent was established. I find that the Landlord issued a proper Notice of Rent Increase and the Notice of Rent Increase has no bearing on my finding that the Tenant has failed to pay the rent.

Conclusion

The Tenant failed to pay the rent that is due under the tenancy agreement. The tenancy has ended.

The Landlord is granted an order of possession effective two days after service on the Tenant.

I order that the Landlord can keep the security deposit in the amount of \$400.00 in partial satisfaction of the claim.

The Landlord is granted a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$2,240.00

The Tenant is at liberty to reapply for the monetary compensation that was severed from this hearing.

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: March 07, 2017

Residential Tenancy Branch