



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF (Tenant's Application)
OPR, MNR, MNDC, MNDS, FF (Landlord's Application)

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution filed February 8, 2017 the Tenant sought an Order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on February 3, 2017 (the "Notice") and to recover the filing fee. In the Landlord's Application for Dispute Resolution filed on February 9, 2017 the Landlord sought an Order of Possession and Monetary Order based on the Notice, authority to retain the Tenant's security deposit and recovery of the filing fee.

Only the Landlord appeared at the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that her daughter, D.W., personally served the Tenant with the Notice of Hearing and the Application on February 9, 2017 by. Based on the Landlord's undisputed testimony, I find the Tenant was duly served as of February 9, 2017 and I proceeded with the hearing in his absence.

The Tenant bears the burden of proving his claims as set out in his Application for Dispute Resolution. As the Tenant failed to attend the hearing, his Application is dismissed without leave to reapply.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Landlord testified that on March 3, 2017 she discovered that the Tenant had moved from the rental unit. She stated that the door to the rental unit was open and all that was left was garbage.

As the Tenant vacated the rental unit and has given up possession of the rental unit the Landlord's application for an Order of Possession is not required.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Is the Landlord entitled to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began August 28, 2013. At the start of the tenancy he paid \$995.00 in monthly rent and a \$497.50 security deposit.

The Landlord testified at the time the Notice was issued, monthly rent was payable in the amount of \$1,045.95 in addition to \$40.00 per month for parking.

The Landlord testified that on February 3, 2017 she issued the Notice indicating that \$1,084.60 was due as of February 1, 2017. She confirmed this should have read \$1,085.95 which includes \$1,045.95 in rent and \$40.00 in parking for February 2017. stated that her daughter personally served the Tenant the Notice on February 3, 2017.

The Notice informed the Tenant that they had five days in which to pay the outstanding rent or make an application for dispute resolution.

The Landlord testified that the Tenant failed to pay the outstanding rent, and also failed to pay rent for March 2017.

In the within hearing, and as provided for in the Monetary Orders Worksheet filed in evidence by the Landlord, the Landlord sought the sum of \$2,171.90 for the following:

Outstanding rent for February 2017	\$1,045.95
Parking for February 2017	\$40.00
Outstanding rent for March 2017	\$1,045.95
Parking for February 2017	\$40.00
TOTAL	\$2,171.90

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and his application to dispute the Notice is dismissed. Therefore, he is conclusively presumed under section 46(5) of the *Act* to have

accepted that the tenancy ended on the effective date of the Notice. As the Tenant vacated the rental unit prior to the hearing an Order of Possession was not required.

Under section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenant had no authority under the *Act* to not pay rent.

I accept the Landlord's undisputed testimony that the Tenant failed to pay rent and parking for February and March 2017. I therefore award the Landlord the \$2,170.90 claimed; I also grant the Landlord recovery of the \$100.00 filing fee for a total monetary award of **\$2,271.90**.

I order that the Landlord retain the Tenant's security deposit of \$497.50 in partial satisfaction of the claim and I grant the Landlord a Monetary Order under section 67 of the *Act* for the balance due of **\$1,774.40**. This Monetary Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The Landlord is at liberty to apply for further monetary compensation should the rental unit require repairs or cleaning.

Conclusion

The Tenant failed to attend the hearing and his application is dismissed.

The Landlord is entitled to compensation for unpaid rent and parking for February and March 2017, may keep the Tenant's security deposit in partial satisfaction of the claim, and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the *Act*, and 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 08, 2017

Residential Tenancy Branch