



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Preliminary Issue

At the outset of the hearing the tenant advised that he moved out on May 2, 2017 and that the issue of the notice to end tenancy was moot, accordingly; I dismiss that portion of the tenants' application.

Issues(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

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

Background and Evidence

The tenancy began on or about May 1, 2016 and was scheduled to end on June 30, 2017 as per their tenancy agreement. Rent in the amount of \$2500.00 is payable in advance on the first

day of each month. The tenant testified that the landlord breached the tenancy agreement and that they should pay for his moving expenses and for the filing fee for this application.

The landlord gave the following testimony. The landlord testified that the tenant was the one who in fact breached the tenancy agreement by paying the rent consistently late and not in full. The landlord testified that the tenant still owes over three thousand dollars in rent. The landlord testified that they issued the notice for the repeatedly late payments and nonpayment of rent.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. The applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant acknowledged that he was consistently late in paying the rent and that there is still an outstanding balance. I find that the tenant was the one in breach of the *Act* and the tenancy agreement and that the tenancy came to an end as a result of his own actions, accordingly the tenant has not satisfied the grounds as outline above and I must dismiss this application.

Conclusion

The tenants' application is dismissed in its entirety.

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: May 09, 2017

Residential Tenancy Branch