



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, OPR, OPL, MND, MNSD, MNDC, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on May 25, 2017 for:

1. An Order cancelling a notice to end tenancy - Section 49;
2. A Monetary Order for compensation or loss - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on July 4, 2017 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for damage to the unit - Section 67;
4. A Monetary Order for compensation - Section 67;
5. An Order to retain the security deposit - Section 38; and
6. An Order to recover the filing fee for this application - Section 72.

Preliminary Matters

The Tenant did not attend the hearing to pursue its application. I therefore dismiss the Tenant's application for dispute resolution.

The Landlord states that at the time of the application it was not aware that the Tenant had moved out of the unit. The Landlord states that it served the application for dispute resolution and notice of hearing by registered mail to the unit address. The Landlord states that the postal tracking information indicates that the Tenant collected the mail. The Landlord states that after this service they discovered that the Tenant had moved out of the unit of June 30, 2017.

Section 89 of the Act provides that an application for dispute resolution must be given only in a number of ways including by sending a copy by registered mail to the address at which the tenant resides. Section 71 of the Act provides that an order may be made that a document not served in accordance with section 89 is sufficiently given or served for purposes of this Act. Although the Landlord gives evidence that the Tenant did not reside at the unit on the date the Landlord served its application, given the Landlord's tracking evidence that the Tenant collected the registered mail, I find that the application and notice of hearing was sufficiently served for the purposes of the Act. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

As the Landlord made its application for damage to the unit before it became aware of the end of the tenancy I find that the Landlord made this claim too early and I dismiss this claim with leave to reapply. The Landlord confirms that the only remaining claim is for unpaid rent.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on December 15, 2013. The Tenant moved out of the unit and left the keys in the door of the unit. The Landlord took possession of the unit and confirmed that the Tenant had moved out of the unit on June 30, 2017. During the tenancy rent of \$1,000.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. In April 2017 the Tenant was served with a two month notice to end tenancy for landlord's use (the "Notice"). The effective date of the Notice was July 1, 2017. The Tenant failed to pay rent for May and June 2017 and the Landlord did not pay the Tenant the equivalent of one month's rent as compensation for ending the tenancy with the Notice. The Landlord claims unpaid rent.

Analysis

Section 26 of the Act provides that 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. Based on the undisputed evidence of unpaid rent I find that the Landlord is entitled to the amount of **\$1,000.00** for May 2017 rent.

Section 51 of the Act provides that a tenant who receives a notice to end a tenancy for landlord's use is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Given the Landlord's evidence that the Tenant did not receive the equivalent compensation of one month's rent, I find that the Landlord is not entitled to unpaid rent for June 2017 as I consider this sum to be the amount owed to the Tenant for having received the Notice. As the Landlord's claim for rent was successful I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,100.00**. Deducting the security deposit plus zero interest of **\$500.00** from the entitlement leaves **\$600.00** owed to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$500.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$600.00**. If necessary, this order may be filed in the Small Claims 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: July 24, 2017

Residential Tenancy Branch