



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein she sought an Order of Possession and Monetary Order based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities, issued February 15, 2017

The hearing was conducted by teleconference on August 8, 2017. Only the Landlord called into 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.

Introduced in evidence was a letter from the Tenant's Trustee in Bankruptcy, J.M., confirming the Tenant had been served with the Landlord's Application for Dispute Resolution and Notice of Hearing; accordingly, I find the Tenant was duly served and I proceeded with the hearing in their absence.

Preliminary Matter

The Landlord confirmed the Tenant had vacated the rental unit such that an Order of Possession was no longer required.

Issues to be Decided

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

Background and Evidence

At the time the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was issued on February 15, 2017, the Landlord indicated the sum of \$2,100.00 was owed for rent.

The Tenant signed a Promissory Note, dated January 10, 2017 (a copy of which was provided in evidence) indicating the sum of \$3,131.92 was owing to the Landlord. This Promissory Note indicated the Tenant had pledged his vehicle as security for the debt owing.

On March 10, 2017 the Landlord applied for Dispute Resolution seeking the sum of \$5,404.26. At this time the Tenant had vacated the rental unit. By amendment dated April 7, 2017 the Landlord increased her monetary claim to \$5,947.47 indicating her cleaning and repair estimates were lower than the actual cost related to her claim made March 10, 2017.

On April 3, 2017 the Tenant made an assignment in bankruptcy. The Landlord confirmed to her knowledge the Tenants debts total \$206,537.75 and she is #12 in a list of creditors.

Analysis

Pursuant to sections 69.3(1) and 70 of the *Bankruptcy and Insolvency Act*, there is a stay of proceedings in effect against all creditors including all Court proceedings that may be initiated by creditors of the Tenant.

The claims made by the Landlord relate to unpaid rent and cleaning and repair costs; these claims existed at the time the Tenant made his bankruptcy assignment; consequently, they are stayed by operation of the *Bankruptcy and Insolvency Act*.

The Tenant acknowledged his debt to the Landlord by way of the Promissory Note filed in evidence. The enforceability of that Note as it relates to the Tenant's vehicles is not within my jurisdiction.

Additionally, it is notable that the Tenant included the Landlord on his list of creditors when making his bankruptcy assignment and did not attend the hearing to dispute the Landlord's claims. In all the circumstances I find the Tenant acknowledged the

\$5,404.26 debt owing to the Landlord. The payment of this debt will, if possible, be dealt with in the Tenant's bankruptcy.

I therefore dismiss the Landlord's monetary claim with leave to reapply. I find that the Landlord, in filing for Dispute Resolution on March 9, 2017 has satisfied the requirements of section 38 of the *Act*.

Conclusion

The Tenant made an assignment in bankruptcy on April 3, 2017. By operation of the *Bankruptcy and Insolvency Act*, a stay of proceedings is in effect against all creditors, including the Landlord. The Landlord's claim is dismissed with leave to reapply.

The Landlord must return the Tenant's security deposit to the Tenant's Trustee in Bankruptcy for the benefit of the Tenant's creditors.

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: August 11, 2017

Residential Tenancy Branch