



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR MNR
Tenant: AAT CNR O

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- An order of possession for unpaid rent or utilities; and,
- A monetary order for unpaid rent or utilities.

The tenant seeks an order to:

- Allow access to (or from) the unit or site for the tenant or the tenant’s guests; and,
- Cancel the Notice to End Tenancy for Unpaid rent or utilities;

Only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me. The Landlord testified that he no longer requires an order of possession given that the Tenant has already vacated the rental unit and I have amended the Landlord’s application to reflect this. Further, the Landlord testified that he wishes to retain part of the security deposit in compensation for the tenant over holding the rental unit. In accordance with section 64 of the *Act*, I amend the Landlord’s application to allow for consideration of this issue.

The Tenant did not appear at the hearing. As such, I dismiss the Tenant’s application in its entirety without leave to reapply.

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.

The Landlord testified that he personally served the Notice of Hearing to the Tenant on August 24, 2017. The Landlord testified that an individual named H.B. witnessed him personally serve the Tenant. Furthermore, the Tenant's Application was scheduled to be heard at the same time as the Landlord's. Therefore, the Tenant had knowledge of the hearing time and date. I am satisfied that the Tenant was properly served with the Notice of Hearing.

Issue(s) to be Decided

- Is the Landlord entitled to keep all or part of the pet damage deposit or security deposit?
- Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord provided a copy of the tenancy agreement between the parties. It confirms the tenancy began on June 5, 2015. The agreement specifies that rent in the amount of \$850.00 per month is due on the first day of each month. The Landlord holds a security deposit in the amount of \$425.00 but does not hold a pet deposit. The tenancy was for a fixed term, ending on June 30, 2017. However, the Tenant stayed in the unit until September 3, 2017.

The Landlord testified that he bought the rental unit in November of 2016 and the current tenancy agreement was established by the previous owner.

The Landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice). The Landlord testified that he personally gave the 10 Day Notice to the Tenant on August 5, 2017. Service of this document was witnessed by the Landlord's brother, R.B. The 10 Day Notice indicated that the amount of outstanding rent accrued at that time was \$850.00. The Landlord testified that this amount represented rent for the month of August 2017.

The Landlord testified that the Tenant paid him \$850.00 on August 23, 2017. The Landlord further stated that the Tenant moved out on September 3, 2017, but did not pay rent for the month of September. The Landlord testified that he returned the security

deposit to the Tenant but kept 3 days' worth of rent for the 3 extra days that the Tenant remained in the unit in September. He stated that this amounted to \$85.00 (3 x per diem rate of \$28.33) and that in the end he only returned \$340.00 of the \$425.00 security deposit to reflect the extra 3 days.

Analysis

After reviewing the evidence before me, I note that the tenancy was for a fixed term, ending June 30, 2017. However, the tenant remained in the rental unit, and paid rent for the month of July. I further note that the Landlord did not apply for an order of possession at the end of the fixed term tenancy when the Tenant did not move out, but rather accepted rent for July 2017. It was not until the Tenant failed to pay rent for the month of August 2017 that the Landlord proceeded to end the tenancy. I also note that there is no evidence that the Landlord accepted rent in July for use and occupancy only. Given all of this, I find the tenancy reverted to a month-to-month tenancy in July of 2017.

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

Based on the Landlord's submission, I am satisfied that the Tenant paid August rent. As the Tenant remained in the rental unit into September of 2017, and did not pay rent, I find the Tenant owes \$850.00 for this month. With respect to the Landlord's request to keep part of the security deposit, and pursuant to section 72 of the *Act*, I allow him to retain \$85.00 from the \$425.00 he held to reflect the 3 extra days (per diem rate of \$28.33) that the Tenant remained in the unit during September (1st till the 3rd). I find the Landlord must return the remainder of the security deposit in the amount of \$340.00. However, given that he has already returned this amount to the Tenant, no further action is required on this matter.

With respect to the Landlord's application for a Monetary Order for unpaid rent for the remainder of September, I find as follows:

The Tenant owes \$850.00 in rent for September of 2017, and the Landlord has only received \$85.00 towards this amount for the days of September 1-3. As such, I find the Landlord is entitled to a monetary order of \$765.00 for the balance of the rent owed for September.

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$765.00** comprised of rent owed. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: September 13, 2017

Residential Tenancy Branch