



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR CNR MNDC MNSD FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;

Tenants:

- cancellation of the landlord's 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The tenants acknowledged service of the landlord's application and evidence on file. The landlord acknowledged service of the tenants' application but not the accompanying evidence package. The tenants testified the evidence package was sent to the landlord by registered mail on September 8, 2017 but returned as unclaimed. The tenants provided a registered mail receipt and tracking number in support of service. I find the landlord was deemed served with the tenants' complete application including evidence package.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy for unpaid rent, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

Is the landlord entitled to a monetary award for unpaid rent?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on October 1, 2016 with a monthly rent of \$3000.00 payable on the 1st day of each month. The tenants paid a security deposit of \$1500.00 plus a \$500.00 pet deposit at the start of the tenancy which the landlord continues to hold.

The landlord testified the tenants failed to pay the \$3000.00 rent payable on September 1, 2017. The landlord served the tenants with a 10 Day Notice by posting a copy to the door of the rental premises on September 1, 2017. The landlord testified that on August 24, 2017, the tenants gave their own notice to end the tenancy effective September 30, 2017. The tenants offered to pay September rent less the security and pet deposit. The landlord refused to accept the reduced rent. The landlord testified that rent for this month is still outstanding. The landlord testified that the tenants did vacate the rental unit on September 29, 2017 so he no longer requires an order of possession.

The tenants acknowledged rent for September 2017 has not been paid to the landlord.

Analysis

Section 26 of the Act requires 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, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Pursuant to section 21 of the Act, unless the landlord gives written consent, a tenant must not apply a security deposit or a pet damage deposit as rent.

I find that the tenant was obligated to pay monthly rent in the amount of \$3000.00 but failed to pay rent for September 2017. I accept the landlord's claim for outstanding rent of \$3000.00.

The landlord continues to hold the security and pet deposit totalling \$2000.00. Although the landlord's application does not seek to retain the security and pet deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain both the security and pet deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1000.00.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the filing fee paid for this application.

Conclusion

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of \$1000.00. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: November 24, 2017

Residential Tenancy Branch