



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes CNR, OPR, MNR, MDSD & FF

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy
- b. An order that the landlord comply with the Act, regulation and/or the tenancy agreement
- c. A tenant Order of Possession
- d. An order that the tenant recover the cost of the filing fee

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$1025 for unpaid rent and/or utilities
- c. A monetary order for damages to the rental property
- d. An order to retain the security deposit
- e. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

Both parties acknowledged that the Application for Dispute Resolution/Notice of Hearing filed by the other party was sufficiently served on them. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy?

- b. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement?
- c. Whether the tenant is entitled to a tenant Order of Possession?
- d. Whether the tenant is entitled to recover the cost of the filing fee?
- e. Whether the landlord is entitled to an Order for Possession?
- f. Whether the landlord is entitled to A Monetary Order and if so how much?
- g. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- h. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on March 5, 2017 remain in effect for one month, extendable for a maximum of 6 months upon inspection and mutual agreement of the parties. The rent was \$1400 per month plus 20% of the utility bills payable on the first day of each month. The tenancy agreement provided that the tenant was to pay a security deposit of \$700. However, the tenant failed to pay the security deposit.

The tenant(s) vacated the rental unit on September 15, 2017.

Tenant's Application:

I ordered that the Tenant's application be dismissed. The Tenant vacated the rental unit and has no intention of having the tenancy reinstated. I determined there was no basis for granting the relief sought and I ordered that the application be dismissed.

The tenant made a number of complaints about the landlord at the hearing. The Application for Dispute Resolution filed by the Tenant does not include a claim for compensation. I determined that as the complaints raised by the Tenant were not included as part of the Tenant's Application for Dispute Resolution there is no basis for hearing the complaints in this hearing.

Landlord's Application - Order of Possession:

The tenant has vacated the rental unit and the landlords have regained possession. It is not necessary to consider the landlord's application for an Order of Possession.

Analysis - Monetary Order and Cost of Filing fee:

With respect to each of the landlords claim for a monetary order I find as follows:

- a. I dismissed the landlord's claim of \$400 for four NSF cheques @ \$100 each The tenancy agreement provided that if the rent was paid late after the 5th of the

month it was subject to a \$100 surcharge, and that N.S.F (bounced) checks will be subject to a \$100 fee. The provision is in conflict with section 7 of the Residential Tenancy Act Regulations which provides as follows:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

...

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the **tenancy agreement provides for that fee. (My emphasis)**

Section 5 of the Act provides that the parties cannot contract out of the Act and Regulations and provides as follows:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

The claim of \$100 per NSF cheque must be dismissed as it is not permitted under the Act and Regulations.

- b. I dismissed the landlord's claim of \$500 for late payments (5 late payments @ \$100 each) for the same reasons set out about. The provision in the tenancy agreement is not permitted under the Act and Regulations and is of no effect.
- c. I dismissed the landlord's claim of \$700 for the damage deposit. While the failure of the tenant to pay the damage deposit is grounds to end the tenancy for cause under section 47 of the Act it is not the landlord's money and there is no basis to make a monetary order against the tenant requiring the tenant to pay this sum to the landlord as the tenancy has come to an end.

- d. I determined the landlords are entitled to \$40.20 for the failure of the tenant to pay the utilities under the tenancy agreement.
- e. I dismissed the landlord's claim to repair damage to the asphalt and a move out cleaning fee. The landlord has not repaired the asphalt as yet. The landlord failed to prove these two claims and as a result they are dismissed.

I ordered that the tenant pay to the landlord the sum of \$40.20 plus \$100 for the cost of the filing fee for a total of \$140.20.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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 28, 2017

Residential Tenancy Branch