



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, RR, OPR, MNR, MNDC, MNSD, ET, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed an Application requesting an early end of tenancy; an order of possession due to unpaid rent; a monetary order for damage and unpaid rent; for money owed or compensation for damage or loss under the Act; to keep all or part of the security deposit or pet deposit; and to recover the cost of the filing fee.

The Tenants filed an Application requesting more time to make an application to dispute a notice to end tenancy; to cancel a notice to end tenancy for unpaid rent or utilities; and to allow the Tenant to reduce rent for repairs, services, or facilities agreed upon but not provided.

The Landlord appeared at the hearing; however the Tenants did not. The Landlord testified that she served the Tenants with her Application and Notice of Hearing using registered mail on September 15, 2017. The Landlord testified that she received the Tenant’s Application and Notice of Hearing in early September 2017. I find that the Tenants were served with the Landlord’s Application and Notice of Hearing in accordance with sections 89 and 90 of the Act.

The Landlord provided affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and make submissions to me.

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.

Preliminary and Procedural Matters

An arbitrator has the authority to dismiss unrelated matters with or without leave to reapply.

The Tenants applied for Dispute resolution a couple of days after receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities from the Landlord. The Tenants served the Landlord with the Notice of Hearing, but failed to attend the hearing. Since the Tenants failed to attend the hearing, their application is dismissed without leave to reapply.

The Landlord has applied for an order of possession due to unpaid rent and also for money owed or compensation for damage or loss under the Act; and a monetary order for damage to the rental unit.

The primary matter to resolve is whether or not the tenancy is ending due to non-payment of rent and whether the Landlord is entitled to a monetary order for unpaid rent. I exercise my authority to dismiss the Landlord's other monetary claims with leave to reapply.

The Landlord testified that the Tenants moved out of the rental unit on November 20, 2017. The Landlord does not require an order of possession for the rental unit.

Issues to be Decided

- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Is the Landlord entitled to keep the security deposit?

Background and Evidence

The Landlord testified that the Tenants did not pay the rent owing under the tenancy agreement for September 2017.

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2017, ("the Notice").

The Landlord testified that the Tenant was served with the Notice by posting it on the Tenants' door on September 2, 2017.

The Notice states that the Tenants have failed to pay rent in the amount of \$1,500.00 which was due on September 1, 2017. The Notice informed the Tenants that the Notice

would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

The Tenants disputed the notice by applying for dispute resolution within the required time frame; however, the Tenants failed to attend the hearing.

The Landlord testified that the Tenants did not pay the rent owing for September 2017, within 5 days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord testified that she never received any rent payment from the Tenants for September 2017.

The Landlord testified that the Tenants have also failed to pay the rent for the following months:

- October 2017, in the amount of \$1,500.00
- November 2017, in the amount of \$1,500.00

The Landlord requested to amend her application to include the rent owing to her under the tenancy agreement for the months of October 2017, and November 2017.

The Landlord seeks a monetary order for unpaid rent in the amount of \$4,500.00.

The Landlord is seeking to keep the security deposit of \$900.00 in partial satisfaction of her claim for unpaid rent.

Analysis

As a general rule, non-payment of rent by a Tenant is considered to be a fundamental breach of a tenancy agreement. A Landlord may elect to end the tenancy by issuing a 10 Day Notice to end tenancy.

Section 26 of the Act states 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.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

I find that the Tenant did not pay the outstanding rent owing under the tenancy agreement within five days of receiving the 10 Day Notice. I find that the Tenants' failure to pay the rent within 5 days is a fundamental breach of the tenancy agreement.

The Tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act; however, the Landlord testified that the Tenants have moved out and she does not require an order of possession.

I find that the Tenants owes the Landlord \$1,500.00 for unpaid September 2017, rent. I also find that the Tenants have not paid the rent owing under the tenancy agreement for October 2017, and November 2017. I find that it is reasonable to permit the Landlord to amend her monetary claim to include an additional two months' of rent. I find that the Landlord has suffered a loss of rent, and the Tenants occupied the rental unit during this time. The Tenants are aware that the tenancy agreement requires them to pay the rent by the first day of each month.

I find that the Tenants owe the Landlord \$4,500.00 for unpaid rent.

I order that the Landlord can keep the security deposit and pet damage deposit in the amount of \$900.00 in partial satisfaction of the claim for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$4,600.00 comprised of \$4,500.00 in unpaid rent for the above mentioned dates and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$900.00 towards the claim of \$4,600.00, I find that the Landlord is entitled to a monetary order in the amount of \$3,700.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants failed to pay the rent owing under the tenancy agreement.

The Landlord is authorized to keep the security deposit and pet damage deposit in partial satisfaction of her claim for unpaid rent.

The Landlord is granted a monetary order in the amount of \$3,700.00.

The Tenants failed to attend the hearing and their application is dismissed without leave to reapply.

The Landlord is granted leave to reapply for compensation for damage to the rental unit.

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 30, 2017

Residential Tenancy Branch