



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, MNSD, MNR, OPR, FF

Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent and utilities;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To be allowed more time to make an application to cancel a notice to end tenancy; and
2. To cancel a One Month Notice to End Tenancy for Cause.

Only the landlord's agent appeared.

Tenant's application

This matter was set for hearing by telephone conference call at 11:00 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord's agent. Therefore, as the tenant did not attend the hearing by 11:10 A.M, and the landlord's agent appeared and was ready to proceed, I dismiss the tenant's application without leave to reapply.

Landlord's application

As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were served in person on October 13, 2017.

I find that the tenant has been duly served in accordance with the Act.

At the outset of the hearing the landlord's agent indicated the tenant vacated the premises on November 18, 2017, and they no longer require an order of possession.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and utilities?

Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The tenancy began approximately four years earlier. Rent in the amount of \$775.00 was payable of the first of each month. The tenant paid a security deposit of \$350.00.

The landlord's agent testified that the tenant failed to pay rent for September, October, and November 2017, in the total amount of \$2,325.00.

The landlord's agent testified that the tenant failed to pay their utilities for November in the amount of \$150.00. The landlord seeks to recover unpaid rent and utilities in the total amount of \$2,475.00.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 26 of the Residential Tenancy Act states:

26 (1) 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.

I accept the undisputed evidence of the landlord's agent that the tenant failed to pay rent for September, October, and November 2017 and failed to pay utilities for November 2017. I find the tenant breached the Act and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover unpaid rent and utilities in the amount of **\$2,475.00**.

I find that the landlord has established a total monetary claim of **\$2,575.00** comprised of the above described amount) and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$350.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$2,225.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application is dismissed. The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: December 04, 2017

Residential Tenancy Branch