



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNR ERP FFT LRE MNDCT MNRT RP
Landlord: OPR MNR FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on December 14, 2017.

The Landlord was represented at the hearing by her daughter, L.L., and an agent, I.W. One of the Tenants, R.M., attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to 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 submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”), a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in both applications deal with whether or not the tenancy is ending due to unpaid rent and whether or not the Landlord is entitled to a monetary order for the unpaid rent. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Tenant’s application with the exception of the following ground:

- to cancel a 10-Day End Tenancy for unpaid rent or utilities (the “Notice”).

Further, since the issues that the Landlord has cross-applied for all relate to the 10-Day Notice, the end of the tenancy, and rent owed, at the outset of the hearing I made it clear that I would consider them in this hearing.

The Landlord has requested to amend her application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I hereby amend the Landlord's application accordingly.

During the hearing, both parties agreed that the Tenants have now moved out of the rental unit and did so at the end of November 2017.

The Landlord stated that she no longer needs an order of possession and the Tenants no longer need to cancel the Notice because they have vacated the rental unit. Given this, the issue surrounding the order of possession is moot, and I dismiss it.

It was explained to both parties at the hearing that the only other issue we would be dealing with was the whether or not the landlord is entitled to a monetary order for unpaid rent or utilities and any further claims would have to be brought forward in a future hearing.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is either party entitled to recover the filing fee for the cost of their application?

Background and Evidence

The Landlord testified that rent is set at \$3,400.00. She further testified that she gave the Tenants a Notice of Rent Increase form back in July of 2017, for an increase to \$3,525.00, effective November 1, 2017. The Tenant denies getting this from the Landlord and disputes that he was made aware of the rent increase in accordance with the Act. The Landlord was unable to provide further proof of service to show the Notice of Rent Increase was delivered to the Tenant. The Landlord stated that she holds a security deposit in the amount of \$1,700.00, and in the hearing she requested that she be able to keep this amount.

The Landlord stated that she is looking to recover rent for the months of October, November, and December of 2017. The Landlord stated that she has received no money from the Tenants since the 10 Day Notice was given to the Tenant on October 4, 2017. The Tenant acknowledged receiving the 10 Day Notice on this day. The 10 Day Notice indicates that the amount outstanding at that time was \$3,400.00 in unpaid rent.

The Landlord stated that the Tenant emailed them at the end of November (around the 27th of November) saying they had vacated the unit (around the 25th of November). The Landlord's agent, I.W., stated that he went to the residence on December 1, 2017 and noted that there was a significant amount of garbage left by the Tenants after they moved out. The Tenant acknowledged leaving some garbage and cleaning supplies in the rental unit, but stated he was having difficulty getting back into the unit to clean because there was a different deadbolt on the front door.

Both parties denied having changed the deadbolt on the front door but the Tenant stated this was part of the reason why he was unable to return to clean up the remainder of the property. The Landlord's agent, I.W., stated that when they went there on December 1, 2017, the house was still accessible through the back door and it was only the lock on the front door that appeared to have had the deadbolt changed. Further, I.W. stated that there were still lots of items on the deck outside, and the place was mess in multiple areas.

The Tenant acknowledged that they have not paid rent for October or November of 2017, but he explained that it was based, in part, on some of the issues with the house, and the expenses they incurred caring for and fixing the house while they lived there. The Tenant stated that they left at the end of November because of all the negative correspondence, including the Notice, they received.

Analysis

First, I turn to the Notice of Rent Increase the Landlord referred me to in the hearing. The Landlord testified that she gave the Tenants a Notice of Rent Increase form back in July of 2017, for an increase to \$3,525.00, effective November 1, 2017. However, the Tenants deny getting this from the Landlord. Given that the Landlord was unable to provide further proof of service to show the Notice of Rent Increase was delivered to the Tenants, I am not satisfied that the Landlord has increased rent in accordance with the Act. As such, any monetary amount I issue will be based on the amount of rent prior to the alleged increase, which was \$3,400.00.

The Tenant stated he moved out because of the all the negative correspondence, including the Notice, he received from the Landlord. I acknowledge that the relationship between the Landlord and the Tenant degraded over the last couple of months, as both parties filed applications against the other. However, I find the Tenants are still responsible for monthly rent for December 2017. I note that they provided very short notice to the Landlord, via email, at the end

of November, and it appears they left garbage and some discarded personal items both inside the house and outside.

Further, back in October 2017 the Tenants had applied to cancel the Notice, which indicates an intention to stay and the hearing had not taken place at the time the Tenants moved out. In summary, the Tenants failed to provide the Landlord with proper notice (one month in advance) that they were leaving, which makes the Tenants responsible for rent due for December 2017. Under section 53 of the Act, the Notice the Tenants gave would automatically correct to the earliest end date possible which would be the end of December. Furthermore, in making this determination, I have also considered that the Tenants did not leave the rental unit empty or sufficiently clean such that the Landlord would be able to re-rent it right away to mitigate their losses for December 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.

Having considered the evidence presented at the hearing, I find there is insufficient evidence to show that the Tenants had a right under the Act to withhold rent. The consistent evidence before me is that the Tenants did not pay rent (\$3,400.00) for October, November, or December of 2017. As such, I find the Landlord is entitled to a monetary order for unpaid rent for these months.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was substantially successful in this hearing, I order the tenants to repay the \$100. Also, considering that the Landlord requested to keep the security deposit in the hearing, and pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the landlord, be kept and used to offset the amount of rent still owed by the tenants. In summary, I grant the monetary order based on the following:

<u>Claim</u>	<u>Amount</u>
Unpaid rent: October - December of 2017	\$10,200.00
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$1,700.00)
TOTAL:	\$8,600.00

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$8,600.00** comprised of rent owed. This order must be served on the tenants. If the tenants fail 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: December 15, 2017

Residential Tenancy Branch