



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, OPB, CNC, CNR, MNR, MNDC, RPP, FF

Introduction

This hearing was convened in response to an application by the Tenants and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on September 5, 2017 for:

1. An Order cancelling two notices to end tenancy - Sections 46; and 47; and
2. An Order for the return of property - Section 67.

On September 26, 2017 the Tenant amended the application to:

3. Add a claim for a Monetary Order for compensation - Section 67; and
4. Remove the order for the return of personal property - Section 67.

On November 6, 2017 the Tenant amended the application to:

5. Increase the monetary compensation claim; and
6. Remove the claims for Order cancelling the notices to end tenancy.

The Landlord applied on September 11, 2017 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

On September 28, 2017 the Landlord amended the application to:

4. Add a claim for a Monetary Order for compensation - Section 67.

The Tenants and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Parties confirm that the tenancy has ended and that the Landlord has possession of the unit. The Landlord states that the Tenants moved out of the unit on November 2, 2017. The Tenant states that his claim for compensation is in relation to moving expenses and events or an incident that occurred during the tenancy. The Tenant states that the claim for return of personal property was made in error and is the reasons for its removal in the amendment. The Tenant agrees that the added claims for compensation made in the amendments are not related to the occupation and possession of the unit. The Landlord states that its claim for compensation is in relation to events or an incident that occurred during the tenancy and is not related to the occupation and possession of the unit.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that unrelated claims in an application may be dismissed with or without leave to reapply. The original claims of the Parties were in relation to the occupation and possession of the unit and unpaid rent. As the added claims of both Parties for compensation are not related to possession of the unit or unpaid rent, I dismiss both Parties claims for compensation with leave to reapply.

As the Landlord has possession of the unit I dismiss the Landlord's claim for an order of possession. I note that the Tenant withdrew its claims for a cancellation of the notices to end tenancy and return of personal property.

At the onset of the hearing and prior to dealing with the amendments the Landlord had asked for an adjournment as the Landlord wished to have legal representation both to assist the Landlord with its claims and to assist the Landlord in responding to the Tenants' claims. After the amendments were dealt with the Landlord confirmed that it

understands its claim for unpaid rent. As the only claim remaining after severing the compensation claims of the Parties is the claim for unpaid rent and as this is a simple matter I decline to adjourn the hearing.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy started on September 1, 2016. Rent of \$1,400.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$700.00 as a security deposit. The Tenants paid the Landlord \$1,100.00 for September 2017.

The Landlord claims unpaid rent of \$300.00.

Tenant NM states that while he was out of country from June to mid-July 2017 a third party moved into the unit and paid the Landlord a security deposit. The Tenant states that this 3rd party left a mess and the Tenant cleaned it up. The Tenant states that the Landlord also kept this 3rd party's security deposit that should have gone to the Tenant for having cleaned the mess. The Tenant states that he withheld \$300.00 from the rent for this cleaning although the Landlord did not agree to this. The Landlord states that she did not agree to use the 3rd party's security deposit towards the rent for September 2017.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Given the undisputed evidence that the Tenants failed to pay the full rent for September 2017, regardless of the Landlord's actions in

relation to the 3rd party, and given the undisputed evidence of the amount of rent that is to be paid each month, I find that the Landlord has substantiated its claim for unpaid rent of **\$300.00**. As the Landlord's claim has been successful I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$400.00**. I order the Landlord to deduct this amount from the security deposit of **\$700.00** in full satisfaction of the claim.

Conclusion

I Order the Landlord to retain \$400.00 from the security deposit of \$700.00 in full satisfaction of the claim.

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