



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, DRI, OPR, MNR, FF

Introduction

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

The Tenant applied on November 10, 2017 for:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order for repairs - Section 67;
3. An Order in relation to a rent increase - Section 43; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on November 23, 2018⁷ for:

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

The Tenant 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. It was noted that the Tenant provided evidence of being given a \$400.00 rent increase set out on a Residential Tenancy Branch (the “RTB”) form to become effective November 1, 2017. This is the rent increase that the Tenant was disputing.

The Parties confirm that no rent increase was collected by the Landlord and the Landlord confirms that no rent increase is being claimed. Given these confirmations I dismiss the Tenant's claim to cancel the notice to end tenancy for cause and the claims for repairs as these claims are no longer relevant. As the Tenant did not pay any rent increase and as the Landlord is not seeking any rent increase I dismiss the Tenant's claim to dispute that rent increase. I note however that the evidence indicates that the rent increase amount of \$400.00 exceeds the amount allowed under the Act and there is no provision in the tenancy agreement, also submitted as evidence, for a rent increase to become effective for any reason such as an increased number of occupants. However as the Tenant's claims are dismissed, including the claim in relation to a rent increase, I decline to award recovery of the filing fee and in effect the Tenant's application is dismissed in its entirety. As the Landlord has possession of the unit I dismiss the claim for an order of possession.

The Landlord wishes to claim damages and other compensation arising from the end of the tenancy. The Landlord has not amended its application to include these claims.

Rule 2.2 of the RTB Rules of Procedure (the "Rules") provides that claims are limited to what is stated in the application. Rule 2.3 of the Rules provides that claims made in an application must be related to each other. As the Landlord did not amend its application I find that the Landlord is limited to the remaining claims for unpaid rent and recovery of the filing fee. Even if the Landlord had made an amendment I note that the matter of damages and compensation is not related to the matter of unpaid rent and an amendment would not have been accepted for this proceeding. I therefore decline to consider these claims however the Landlord remains at liberty to make any claims for damages or compensation in relation to any other breaches of the Tenant.

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 January 15, 2015. Rent of \$1,100.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$550.00. The Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent that was issued on November 10, 2017 (the "Notice"). The Notice carries an effective date for the Tenant to vacate the unit of December 1, 2017. The Tenant did not dispute the Notice and moved out on that date. The Tenant did not pay November 2017 rent of \$1,100.00.

The Landlord claims unpaid rent of \$1,100.00 for November and \$1,100.00 for December 2017. The Landlord states that the Tenant did not give any notice to end the tenancy and that the Landlord was unable to show the unit to prospective tenants.

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. No rent is payable after a tenancy ends. Based on the undisputed facts that the Tenant did not pay rent for November 2017 as required under the tenancy agreement I find that the Landlord has substantiated unpaid rent of **\$1,100.00**. As the Landlord ended the tenancy the Tenant was not required to give notice to end the tenancy. As the Tenant moved out of the unit as required by the Landlord's stated effective date of the Notice, I find that no further rent is payable and I dismiss the claim for unpaid December 2017 rent. As the Landlord's application has had merit I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,200.00**. Deducting the security deposit plus zero interest of **\$550.00** from this entitlement leaves **\$650.00** owed by the Tenant.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$550.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$650.00**. If necessary, this order may be filed in the Small Claims Court and 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: January 31, 2018

Residential Tenancy Branch