



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

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

On November 18, 2017, the Landlord submitted an Application for Dispute Resolution for an order of possession; for a monetary order for unpaid rent or utilities.

On November 22, 2017, the Tenant made an Application for Dispute Resolution to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The matter was set for a conference call hearing. The Landlord attended the teleconference hearing; however, the Tenant did not. The Landlord provided affirmed testimony that the Tenant was served the Notice of Hearing by posting the Notice to the Tenant’s door; and also by sending the Notice to the Tenant using registered mail on November 27, 2017. I find that the Tenant has been duly served with the Notice of Hearing in accordance with sections 89 and 90 of the *Residential Tenancy Act* (“the Act”).

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

The Tenant failed to attend the hearing; therefore, I dismiss the Tenant’s application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 7, 2017.

The Landlord testified that the Tenant moved out of the rental unit on January 2, 2018, and he does not require an order of possession for the rental unit. The Landlord requested to amend his application to include a request to keep the security deposit in partial satisfaction of his claim for unpaid rent.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on September 1, 2017, as a month to month tenancy. Rent in the amount of \$1,600.00 is to be paid by the first day of each month. The Tenant paid the Landlord a security deposit of \$800.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant has not paid the rent that is owing under the tenancy agreement.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 7, 2017. The Landlord testified that the Tenant was served with the Notice in person.

The Notice states that the Tenant has failed to pay rent in the amount of \$1,100.00 which was due on November 1, 2017. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

Then Tenant disputed the 10 Day Notice on November 22, 2017, and failed to attend the hearing.

The Landlord is seeking a monetary order for unpaid rent.

The Landlord testified that he has received a total of \$2,100.00 in rent from the Tenant since the tenancy began. The Landlord testified that the Tenant owes rent as follows:

- October 2017, in the amount of \$1,100.00
- November 2017, in the amount of \$1,600.00
- December 2017, in the amount of \$1,600.00

The Landlord testified that he was not able to rent the unit out for the month of January 2018, after the Tenant vacated on January 2, 2018, and he has suffered a loss of \$1,600.00 in rent.

The Landlord seeks a monetary order for unpaid rent as set out above in the amount of \$5,900.00.

The Landlord is seeking to keep the security deposit of \$800.00 in partial satisfaction of the claim for unpaid rent.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant owes the Landlord \$5,900.00 for unpaid rent.

I order that the Landlord can keep the security deposit in the amount of \$800.00 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. As the Landlord was successful with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

After setting off the security deposit of \$800.00 towards the rent owing of \$5,900.00 and the \$100.00 filing fee, I grant the Landlord a monetary order in the amount of \$5,200.00.

This monetary 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 failed to pay the rent due under the tenancy agreement. The Tenant owes the Landlord \$5,900.00 for unpaid rent.

I order that the Landlord can keep the security deposit in the amount of \$800.00 in partial satisfaction of the claim for unpaid rent.

The Landlord is granted a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$5,200.00.

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: February 05, 2018

Residential Tenancy Branch