



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **Landlord** – OPRM-DR, FFL
 Tenant – CNR

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant sought:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The landlord, the landlord's assistant and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord acknowledged receipt of the Tenant's Application for Dispute Resolution (Tenant's Application) and evidentiary package which were personally served to the landlord on January 05, 2018. Pursuant to sections 88 and 89 of the *Act*, I find the landlord is duly served with the Tenant's Application and evidence.

The tenant acknowledged receipt of the Landlord's Application for Dispute Resolution (Landlord's Application) which was left in the mailbox at the rental unit on January 10, 2018. Although not served in accordance with section 89 (1) of the *Act*, I find the tenant is duly served with the Landlord's Application pursuant to section 71 (c) of the *Act*, which allows an Arbitrator to find a document sufficiently served for the purposes of the *Act*.

The tenant acknowledged receipt of the landlord's evidence which was left in the mailbox at the rental unit on February 13, 2018. In accordance with section 88 of the *Act*, I find the tenant is duly served with the landlord's evidence

At the outset of the hearing the landlord testified that the tenant has moved out of the rental unit and that the landlord has rented the rental unit to another occupant as of February 01, 2018.

As the tenant has moved out of the rental unit, the tenant's Application to cancel the 10 Day Notice is dismissed, without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

Written evidence was provided that this tenancy began on March 01, 2017, with a monthly rent of \$1,500.00, due on the first day of the month. The landlord and the tenant agreed that the rent was reduced to \$1,000.00. The landlord and the tenant agreed that the landlord continues to retain a security deposit in the amount of \$600.00.

The tenant provided some correspondence between the landlord and the tenant regarding water access issues in September 2017 and October 2017.

The landlord testified that the tenant did not pay the monthly rent for January 2018 and submitted that they are seeking to recover the unpaid rent for January 2018.

The tenant confirmed that they did not pay the monthly rent for January 2018 and stated that they have provided evidence of hardship as water access was restricted at the

rental unit during the months of September 2017 and October 2017 due to circumstances not in the tenant's control.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

I find the tenant did not provide any evidence that they were entitled to deduct any amounts from their rent for January 2018. Regardless of water access issues at the rental unit in September 2017 and October 2017, the tenant did not establish that they paid for any emergency repairs or otherwise had legal authority under the *Act* to withhold the monthly rent.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Based on the written evidence and the affirmed testimony, I find the landlord is entitled to a monetary award of \$1,000.00 for unpaid rent owing for this tenancy for January 2018.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in this application, I also allow them to recover their filing fee from the tenant.

Conclusion

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, to retain the tenant's security deposit and to recover the filing fee:

Item	Amount
Unpaid January 2018 Rent	\$1,000.00
Less Security Deposit	-600.00
Filing Fee for this application	100.00
Total Monetary Order	\$500.00

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: February 26, 2018

Residential Tenancy Branch