



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, OPR, MNR, MNSD & FF

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 10 day Notice to End Tenancy dated January 2, 2018
- b. An order to cancel the 10 day Notice to End Tenancy dated February 2, 2018
- c. An order for repairs

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$4250 for unpaid rent
- c. An Order to retain the security deposit.
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on January 2, 2018. I find that a second 10 day Notice to End Tenancy was personally served on the landlord on February 2, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the 10 day Notice to End Tenancy dated January 2, 2018?

- b. Whether the tenants are entitled to an order cancelling the 10 day Notice to End Tenancy dated February 2, 2018?
- c. Whether the tenants are entitled to a repair order?
- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to A Monetary Order and if so how much?
- f. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- g. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on August 1, 2017 and continue for one year. The rent was \$1700 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$850 at the start of the tenancy.

The landlord testified the tenants failed to pay the rent for January 2018 (\$1200 is owed) and February 2018 (\$1700 is owed) and the sum of \$2900 remains owing. The tenant testified he made 2 payments of \$500 for January 2018 thus reducing the claim for non-payment of rent for January by \$500. The landlord denies receiving the second \$500 payment.

After considering all of the evidence I determined the tenants failed to prove they made the second payment of \$500. The tenant testified he had a receipt. However, he failed to upload a copy of that receipt to the file online and failed to provide the landlord with a copy of that document as required by the Rules. The landlord denies receiving the second payment of \$500 or giving a receipt. As a result I determined the tenants owe \$1200 for January 2018.

The tenants vacated the rental unit at the end of February 2018.

Tenants' Application:

The Tenants have vacated the rental unit. As a result I determined it was no longer to consider the tenants application to cancel the two 10 day Notices to End Tenancy or to consider their application for a repair order.

The tenants' application is dismissed as moot.

Landlord's Application - Order of Possession:

It is no longer necessary to consider the landlord's application for an Order of Possession as the tenants have vacated the rental unit and the landlord has regained possession.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of January 2018 (\$1200 is owed) and February 2018 (\$1700 is owed) and the sum of \$2900 remains owing. I dismissed the landlord's claim of \$850 for a pet damage deposit. The failure to pay a security deposit or pet damage deposit as required by a tenancy agreement may be grounds to end the tenancy for cause but it does not give the landlord a separate claim for that money as a security deposit and/or pet damage deposit is the tenants' money and can only be used to apply to a monetary order obtained by the landlord.

The landlord requested to present evidence alleging the tenant has damaged the rental unit and/or failed to sufficiently clean it. The landlord must first include such a claim in an Application for Dispute Resolution before an arbitrator can consider it.

I granted the landlord a monetary order in the sum of \$2900 plus the sum of \$100 in respect of the filing fee for a total of \$3000.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$850. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$2150.

Conclusion:

I ordered that the Landlord shall retain the security deposit of \$850. In addition I further ordered that the Tenant(s) pay to the Landlord(s) the sum of \$2150.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on both parties.

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: March 06, 2018

Residential Tenancy Branch