



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OPR, MNR

Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. For a monetary order for unpaid rent.

The tenant's application are seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent; and
2. To cancel a One Month Notice to End Tenancy for Cause.

Tenant's applications

This matter was set for hearing by telephone conference call at 9:30 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenant did not attend the hearing by 9:40 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenant's applications without leave to reapply.

Landlord's application

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were served in person on March 13, 2018. I find that the tenant has been duly served in accordance with the Act.

At the outset of the hearing the landlord stated that the tenant vacated the premises on April 1, 2018. Therefore, I find it no necessary to issue an order of possession.

The landlord stated that they seek to recover loss of rent for April 2018, and damages to the rental unit.

The landlord was advised that due the principles of natural justice and section 59 of the Act that these matters cannot be heard today, as they are not listed in the original application and the tenant was not served with an amendment. Therefore, only the items listed in the original application will be considered. The landlord is at liberty to file a new application for any additional loss.

Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent and utilities?

Background and Evidence

The tenancy began on August 1, 2017. Rent in the amount of \$1,200.00 was payable on the first of each month. The tenant paid a security deposit of \$600.00 and a pet damage deposit of \$600.00 (the "Deposits"). The tenancy ended on April 1, 2018.

The landlord testified that the tenant failed to pay rent (\$1,200.00) and utilities (\$155.00) for March 2018. The landlord seeks to recover the amount of \$1,355.00.

The landlord testified that the tenant alleged that they paid \$3,600.00 at the start of the tenancy, which was their Deposits, first and last month of rent. The landlord stated that is false. The tenant only paid \$2,400.00. They did not collect a last month of rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

I accept the undisputed evidence of the landlord that the tenant failed to pay rent and utilities for March 2018. I find the tenant has breached the Act and this caused losses to the landlord. I find that the landlord has established a total monetary claim of **\$1,455.00** comprised of unpaid rent, unpaid utilities and the \$100.00 fee paid for this application.

I order that the landlord retain the Deposits in the amount of \$1,200.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$255.00**.

This 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's applications are dismissed.

The landlord is granted a monetary order and may keep the Deposits in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: May 16, 2018

Residential Tenancy Branch