



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDC, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (*"the Act"*).

On August 11, 2018, the Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

On August 16, 2018, the Landlord applied for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

The matter was set for a conference call hearing. The Landlord attended the hearing; however, the Tenants did not. The Landlord testified that she served the Tenants with the Application for Dispute Resolution and Notice of Hearing, by registered mail sent on August 24, 2018. A Canada Post receipt and tracking number was provided as evidence of service. I find that the Tenant Mr. C.S. has been duly served with notice of the hearing in accordance with 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 disputed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 6, 2018 but failed to attend the hearing to pursue the dispute.

This matter was set for hearing by telephone conference call at 9:30 am on this date. The line remained open while the phone system was monitored for fifteen minutes and the tenant did not call into the hearing during this time. Therefore, as the Tenant did not attend the hearing by 9:45 am, I dismiss the Tenant's application to dispute the 10 Day Notice.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Issues to be Decided

- Is the Landlord entitled to money owed or compensation for damage or loss?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began in February 2017. Rent in the amount of \$1,550.00 is due to be paid to the Landlord by the first day of each month.

The Landlord testified that the Tenants failed to pay all the rent for July 2018 and they have not paid rent for August 2018, and September 2018.

The Landlord is seeking a monetary order as follows:

- July 2018 in the amount of \$25.00
- August 2018 in the amount of \$1,550.00
- September 2018 in the amount of \$1,550.00

The Landlord is also seeking compensation for the cost of cleaning and dump fees. The Landlord testified that she received an estimate that the cost will be \$1000.00. The Landlord testified that she has not performed the clean up or paid for dumping.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenants have failed to pay the rent owing under the tenancy agreement.

The Landlord's claim for other monetary compensation including cleanup costs or dumping costs are dismissed with leave to reapply.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was partially successful with their application. I order the Tenant to repay the \$100.00 filing fee.

I grant the Landlord a monetary order in the amount of \$3,225.00 for unpaid rent and the cost of the filing fee.

Conclusion

The Tenant's application is dismissed. The Landlord is granted an order of possession for the rental unit effective 2 (two) days, after service on the Tenant.

I grant the Landlord a monetary order in the amount of \$3,225.00 for unpaid rent and the cost of the filing fee.

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: September 28, 2018

Residential Tenancy Branch