



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, OLC, PSF, OPR, MNR, FFT, FFL

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on August 10, 2018 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order for emergency or other repairs - Section 32;
3. An Order for the Landlord’s compliance - Section 62;
4. An Order for the Landlord to provide services or facilities required by law - Section 65; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on August 17, 2018 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Tenant states that they have moved out of the unit. The Landlord confirms that the Landlord has possession of the unit. As the validity of the notice to end tenancy is only relevant to the possession of the unit and as the Landlord has possession, I dismiss the

Tenant's claim for a cancellation of the notice to end tenancy and the Landlord's claim for an order of possession.

The Tenant confirms that the claim for compliance is in relation to the removal of previously provided items and space from the rental unit by the Landlord during the tenancy. As the claims for compliance, repairs and facilities or services are relevant to an ongoing tenancy and as the tenancy has ended I dismiss these claims. As the Tenant's claims have been dismissed I also dismiss the claim for recovery of the filing fee and in effect the Tenant's application is dismissed in its entirety. As the Tenant did not make any claim for compensation with this application, if the Tenant experienced any losses caused by the Landlord's breach of the Act or tenancy agreement during the tenancy, the Tenant remains at liberty to make an application in relation to these losses.

Issue(s) to be Decided

Is the Landlord entitled to the unpaid rent claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy started on April 1, 2017 with rent of \$1,450.00 payable on the first day of each month. At the outset of the tenancy the Landlord collected \$725.00 as a security deposit. On August 8, 2018 the Landlord served the Tenant in person with a 10 day notice to end tenancy for unpaid rent (the "Notice"). A copy of this Notice has been provided as evidence. The Notice sets out that the Tenant failed to pay the full rent for August 1, 2018. The Notice sets out an effective move out date of August 18, 2018. The Tenant moved out of the unit on or about August 21, 2018.

The Landlord states that the Tenant has not paid the rent for August 2018 and claims \$1,450.00. The Landlord also claims unpaid rent for September 2018. The Landlord states that September 2018 rent was claimed as the Tenant was still in the unit at the

time of the application and as the Landlord was not sure if the Tenant would still be in the unit or would pay rent the Landlord for this month. The Landlord states that it also did not try to rent the unit as he was unsure what would occur at the hearing. The Tenant agrees that rent was not paid for August 2018 and states that this was due to various breaches of the Landlord. The Tenant states that no rent is payable for September 2018 as the Tenant was no longer in the unit for any part of this month.

Analysis

Section 26(1) of the Act provides that 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. Rent is payable until a tenancy ends. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Based on the undisputed evidence that the Tenants did not pay rent for August 2018 and give the undisputed evidence of the tenancy agreement provision on rent I find that the Landlord has substantiated an entitlement to **\$1,450.00** for unpaid rent.

As the Landlord ended the tenancy with an effective date prior to September 1, 2018 and as the Tenants vacated the unit on August 21, 2018, I find that the tenancy ended prior to September 1, 2018 and that the Tenant complied with the Notice. For these reasons I find that the Landlord has not substantiated that the Tenant was required to pay rent for September 2018 or that the Tenant breached the Act or tenancy agreement by failing to move out of the unit and overholding the unit into September 2018. I therefore dismiss the claim for unpaid rent for September 2018. As the Landlord's application has met with some success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,550.00**. Deducting the security deposit of **\$725.00** plus zero interest from the Landlord's entitlement leaves **\$825.00** owed to the Landlord.

Conclusion

The Tenants' application is dismissed.

I Order the Landlord to retain the security deposit plus interest of \$725.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$825.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order 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 Act.

Dated: September 28, 2018

Residential Tenancy Branch