



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, OPR, MNR, MND, MNDC, MNSD, FFL

Introduction

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

On November 13, 2018, the Tenant applied for more time to make an application to dispute a notice to end tenancy and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

On November 15, 2018, the Landlord applied for a monetary order for unpaid rent and an order of possession for the rental unit based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord also applied for a monetary order for damage to the rental unit and to retain the security deposit in partial satisfaction of the claim for unpaid rent.

The matter was set for a conference call hearing. The Landlord appeared at the hearing; however, the Tenant did not. The Landlord provided affirmed testimony that she served the Tenant with the Notice of Dispute Resolution proceeding documents in person on November 20, 2018. I find that the Tenant was served with notice of the hearing and failed to attend.

The Landlord was provided with an opportunity to ask questions about the hearing process. The Landlord provided affirmed oral testimony and to made submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

Since the most important matter to determine is whether or not the tenancy is ending due to non-payment of rent, the Landlord's claims for compensation for damage are dismissed with leave to reapply.

Since the Tenant failed to attend the hearing to pursue his application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2018, I dismiss the Tenant's application in its entirety without leave to reapply.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to non-payment of rent?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Are the parties entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began in November 2002. Rent in the amount of \$450.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$180.00.

10 Day Notice

The Landlord testified that the Tenant failed to pay the rent when it was due.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2018. The Notice indicates the Tenant failed to pay \$450.00.

The Landlord testified that on November 20, 2018, the Tenant paid her \$140.00 towards the rent owing. The Landlord testified that the Tenant owes \$310.00 for November 2018, rent.

The Landlord testified that the Tenant also failed to pay the rent due under the tenancy agreement for the month of December 2018. The Landlord is seeking \$450.00 for unpaid December rent. The Landlord is seeking to keep the security deposit of \$180.00 towards the unpaid rent. The Landlord is seeking a monetary order for the balance of rent owing.

The Landlord testified that the Tenant moved out of the rental unit approximately one week prior to this hearing. The Landlord does not require an order of possession for the rental unit.

Analysis

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 Tenant failed to pay the rent due under the tenancy agreement for November and December 2018.

I find that the Tenant owes the Landlord \$310.00 for November 2018, rent and \$450.00 for December 2018, rent.

I authorize the Landlord to keep the security deposit in partial satisfaction of her claims. After calculating the interest on the security deposit I find that the Landlord is holding a security deposit in the amount of \$186.37.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord was successful with her application. I order the Tenant to repay the amount of \$100.00 to the Landlord for the cost of the application fee.

I grant the Landlord a monetary order in the amount of \$673.63. 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 failed to attend the hearing to pursue his application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Tenant's application is dismissed.

The Tenant moved out of the rental unit prior to the hearing and the Landlord does not require an order of possession for the rental unit.

The Tenant failed to pay the rent due under the tenancy agreement for November 2018 and December 2018. The Landlord is authorized to keep the security deposit towards unpaid rent.

I grant the Landlord a monetary order in the amount of \$673.63. 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.

The Landlord has leave to reapply for compensation for damage to the rental unit.

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: December 20, 2018

Residential Tenancy Branch