



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, OLC, FFL, MNDCL, MNRL, OPL, OPR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent and damages pursuant to section 67.
- authorization to retain the tenant’s security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant acknowledged receipt of evidence submitted by the landlord. The tenant did not submit any documentation for this hearing.

At the outset of the hearing, both parties confirmed that the tenants have moved out and that the landlord has possession of the unit, accordingly; I dismiss the landlords request for an order of possession.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the tenant entitled to an order compelling the landlord to comply with the *Act*, regulation, or tenancy agreement?

Is either party entitled to recover the filing fee for this application?

Background and Evidence

The landlord gave the following testimony. The landlord testified that the tenants took possession of the unit on June 23, 2016 even though it was available on June 8, 2016. The landlord testified that the tenants move out on April 8, 2019. The monthly rent of \$1778.00 was due on the first of each month. The landlord testified that the tenants provided a security deposit of \$825.00 when they first moved in. The landlord testified that she issued a Two Month Notice to End Tenancy for Landlords Use of Property on January 27, 2019 with an effective date of March 31, 2019.

The landlord testified that since the tenants moved into the unit late in June 2016 but paid for the whole month, she was only seeking half a month's rent for February and that the tenants could have March free as per the notice. The landlord testified that the tenants did not make any rental payments for February or March and that they did not move out on until April 8, 2019. The landlord testified that she issued a 10 Day Notice to End Tenancy for Unpaid Rent on March 2, 2019. The landlord testified that since the tenants did not comply with the notice she should be entitled to three months of unpaid rent. The landlord testified that she also seeks a monetary order for damages but has not yet undertaken the work along with the recovery of her filing fee.

The tenant gave the following testimony. The tenant testified that she moved out on "April 3rd or 4th". The tenant testified that the landlord made a promise that since she paid for the full month of rent in June 2016 even though she moved into the unit on June 23, 2016; she would be entitled to a full month of free rent at the end of the tenancy. The tenant testified that since she received a two month notice, she would be entitled to an additional month of free rent. The tenant testified that since she was out on April 3rd or 4th it wasn't a significant hardship to the landlord and that they should not be entitled

to any rent. The tenant testified that she feels that she should be reimbursed her \$100.00 filing fee.

Analysis

The landlord initiated the end of the tenancy by issuing a Two Month Notice to End Tenancy for Landlords Use of Property to allow her son to move into the property. The landlord submits that since they didn't pay any rent for February or March the notice is invalid and she is not bound by the terms. Section 51 of the Act addresses the issue before me as follows:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord **on or before** the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I find that the notice is still valid and I address my findings as follows. The tenants are entitled to one month's free rent but must pay the balance of rent for their time in the unit.

The landlord gave sworn testimony that the tenants would be entitled to half a month's rent as compensation for the month of February as noted in her 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. I find that the tenants owe \$889.00 of rent for February, the tenants are entitled to the compensation as per section 51 of the Act for the month of March and no rent is payable, and that the tenants owe a pro-rated amount of unpaid rent for April of \$474.13 for over holding the unit for 8 days.

The landlord continues to hold the tenant's security deposit in the amount of \$825.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim.

I find that the landlords are entitled to recovery the \$100.00 filing fee from the tenant.

Despite the tenants' testimony and claim that she had proof and documentation to show that no rent is owed, she did not submit it for this hearing. The tenant has not been

successful in any part of her application and I therefore dismiss the tenants' application in its entirety without leave to reapply.

The landlord referred to the costs of damages that she will incur to clean and repair the unit. However, the landlord has yet to conduct the work and therefore is premature in this claim; I hereby dismiss this portion of her application with leave to reapply.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I issue a \$638.13 Monetary Order in favour of the landlords under the following terms, which allows the landlords to recover unpaid rent and the filing fee, and also allows the landlords to retain the tenant's security deposit:

Item	Amount
Unpaid Rent for February	\$889.00
Over holding unit April 1-8	474.13
Filing fee	100.00
Minus security deposit	-825.00
Total Monetary Order	\$638.13

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: April 26, 2019

Residential Tenancy Branch