



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDCL-S, MNRL-S, OPR, FFL
Tenant: CNR, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Parties pursuant to the *Residential Tenancy Act* ("Act").

The Tenant's Application is for an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("Notice"), and to recover the filing fee for the application.

The Landlords filed a claim for an order of possession based on unpaid rent, and requested monetary orders for unpaid rent, for compensation under the Act or tenancy agreement, to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee for the application.

Only the Landlords appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

As both Parties filed applications and these were scheduled to be heard at the same time, service of the applications and Notice of Hearing is not in issue.

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.

Issue(s) to be Decided

- Should the Notice to End Tenancy for unpaid rent be cancelled or is it valid?
- Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the testimony of the Landlords, I find that the Tenant was served with the Notice on April 3, 2019, with an effective vacancy date of April 8, 2019.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that the Tenant had five days to dispute the Notice. The Tenant applied to cancel the Notice as described above.

The Landlords testified that the monthly rent for the rental unit is \$1,610.00, which is due on the first day of the month, and that the Tenant paid a security deposit of \$787.50 and a pet damage deposit of \$787.50 on August 15, 2018.

The Landlord provided evidence of cancelled rent cheques from the Tenant for April and May 2019. This included evidence that the bank charged the Landlords \$7.00 for each cheque with insufficient funds.

The Landlords submitted an addendum to the tenancy agreement dated September 2, 2018, which was initialled by the Parties and states:

Rent Cheques will be cashed on the first day of every month. Any rent cheque that bounces will be subject to a \$50.00 fee and if funds are not available within 5 days, a late payment fee of \$50.00 will be charged. No exceptions will be made to this rule.

Analysis

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

I find that the Tenant has not paid all the rent due to the Landlord, and therefore, the 10 Day Notice is valid and should not be cancelled. Under section 26 of the Act, the Tenant could not withhold rent unless she had an order from the Residential Tenancy Branch allowing her to do so, or if the Tenant had paid for emergency repairs in accordance with section 33 of the Act. I find the Tenant had no order, nor did she provide any evidence she had paid for emergency repairs. As such, I find the Tenant had no authority under the Act to withhold rent from the Landlord, so I dismiss the Tenant's application.

The effective date of the Notice was April 8, 2019; however, since the Notice was served in person on April 3, 2019, the effective date is inconsistent with section 46 of the Act, which states:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

[emphasis added]

The Tenant received the Notice on April 3, 2019, so the correct effective vacancy date was April 13, 2019. Section 53 of the Act states that an incorrect effective date is automatically changed to be the earliest date that complies with the section. As such, this error does not invalidate the Notice and is automatically corrected.

In terms of the Landlord's late rent fee, section 7(1) of the *Residential Tenancy Act* Regulation sets out the allowable fees that can be charged by a landlord, which includes:

7(1) (d) subject to subsection (2), an administration fee of **not more than \$25** for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

[emphasis added]

Having found the Tenant has failed to pay all rent when due, I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I also find that the Landlord has established a total monetary claim of **\$3,384.00**, comprised of:

- \$1,610.00 in rent due for April 2019;
- \$1,610.00 in rent due for May 2019;
- \$7.00 bank fee for a non-sufficient funds cheque for April;
- \$7.00 bank fee for a non-sufficient funds cheque for May;
- \$25.00 Landlord's late fee for April 2019 from the tenancy agreement;
- \$25.00 Landlord's late fee for May 2019 from the tenancy agreement; and

- \$100.00 filing fee paid by the Landlords for this application.

I dismiss the Tenant's application without leave to reapply and I award the Landlords an order of possession and a monetary order of \$3,384.00. The deposits are set off as indicated below.

Conclusion

The Tenant failed to pay the Landlords full rent for April and May 2019, so the Landlords served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. The Landlords are successful in their application for an order of possession and for a monetary order in the amount of \$3,384.00 for unpaid rent and other money owed by the Tenant.

I order that the Landlord retain the Tenant's security and pet damage deposits totalling \$1,575.00 in partial satisfaction of the claim, and I grant the Landlord an order under section 67 for the balance due of **\$1,809.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 24, 2019

Residential Tenancy Branch