



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dr. C.R. Rally Inc.
Delaney Properties Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, LAT, LRE, OLC, RP, RR, MNDC, FF

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 July 2, 2019 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. A Monetary Order for compensation or loss - Section 67;
3. An Order for the Landlord to comply with the Act - Section 62;
4. An Order allowing a lock change - Section 70;
5. An Order suspending or setting conditions on the Landlord’s right to enter the rental unit - Section 70;
6. An Order for repairs - Section 32;
7. An Order for a rent reduction - Section 65; and
8. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on July 8, 2019 with an amendment to add a claim made July 31, 2019 for:

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

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

Preliminary Matter

The Tenant's application sets out claims, other than the claim to cancel the notice to end tenancy, that are only relevant to an ongoing tenancy and are not related to whether the tenancy should end or continue. The Tenant also applies for compensation in relation to the Landlord's failures during the tenancy. The Landlord's amendment sets out compensation claims in relation to damages to the unit, additional unpaid rent, and other losses and compensation.

Rule 2.3 of the Residential Tenancy Branch (the "RTB") Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the Tenants' claims other than that to dispute the notice to end tenancy are not related to whether or not the tenancy should end or continue I dismiss those claims with leave to reapply. As the Landlords' claim for damages or compensation are not related to whether or not the tenancy should end or to the Landlord's claim for unpaid rent in its original application, I dismiss those claims, except those in relation to unpaid rent, with leave to reapply.

The Parties confirm that the Tenants have moved out of the unit and that the Landlord does not require an order of possession. Based on these agreed facts, I find that the Tenants' claim to cancel the notice to end tenancy and the Landlords' claim for an order of possession are no longer relevant and I dismiss these claims. As the Tenants claim to cancel the notice to end tenancy had no merit, I dismiss the claim for recovery of the filing fee.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on December 1, 2018 and provides that rent of \$2,100.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,050.00 as a security deposit. The Tenants paid no rent for May, June, July and August 2019.

The Landlord states that the Tenants did not inform the Landlord when they moved out of the unit and did not return the keys until August 8, 2019. The Tenant states that although they did have contact information for the Landlord they did not inform the Landlord when they vacated the unit and did not return the keys until August 8, 2019.

The Landlord claims unpaid rent for May, June, July and August 2018.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Rent is no longer payable after a tenancy ends. Section 44(1)(d) of the Act provides that a tenancy ends when the tenant vacates or abandons the rental unit. Section 37 of the Act provides, inter alia, that when a tenant vacates a rental unit, the tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. Based on the undisputed evidence that the Tenants did not return the keys to the unit until August 8, 2019 despite having the Landlord's contact information to determine where to leave the keys, I find on a balance of probabilities that the tenancy ended on August 8, 2019. Based on the undisputed evidence that no rent was paid from May 1, 2019 to August 8, 2019 I find on a balance of probabilities that the Landlord has substantiated a total of \$6,841.92 in unpaid rent as follows:

- \$2,100.00 for May 2019;
- \$2,100.00 for June 2019;

- \$2,100.00 for July 2018; and
- \$541.92 for the period August 1 to 8, 2019 inclusive. This amount is based on a per diem of \$67.74 for August 2019 x 8 days.

As set out under the Preliminary Matters, the Landlord remains at liberty to make an application for any lost rental income caused by the Tenants after the date of August 8, 2019. As the Landlord's claim for unpaid rent has been successful I find that the Landlord is entitled to recovery of the \$100.00 filing fee for a total entitlement of **\$6,941.92**. Setting the security deposit plus zero interest of **\$1,050.00** off this entitlement leaves **\$5,891.92** owed by the Tenants to the Landlords.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$1,050.00.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$5,891.92**. 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 RTB under Section 9.1(1) of the Act.

Dated: August 26, 2019

Residential Tenancy Branch