



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL FFT OLC FFL OPRM-DR

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An order of possession pursuant to section 55;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- Cancellation of a 2 Month Notice to End Tenancy for Landlord’s Use pursuant to section 49;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing, assisted by a family member, and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties confirmed receipt of the materials. I find based on the testimonies that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

At the outset of the hearing the parties testified that the tenancy has ended and the tenant withdrew their application in its entirety. The landlord withdrew the portion of their application seeking an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The named tenant was previously the owner of the rental property. The parties entered into an agreement for purchase and sale of the property wherein the landlord would purchase the property and the sellers would be permitted to continue to reside in the rental property as the buyer's tenants. The amendment to the contract of purchase and sale submitted into evidence contains a clause stating:

The Buyer agrees to rent the upstairs suite in the single family home to the Seller for \$1,500 + Utilities per month for 6 months, unless agreed upon separately between the buyer and seller, ending February 28th, 2020. Upon subject removal, the buyer and seller will enter into a 6 month rental agreement in accordance with the Residential Tenancy Act Section 49.

The tenant gave written notice to the landlord on September 22, 2019 and moved out on September 30, 2019. A move-out condition inspection report was prepared by the parties. Damage to the suite was noted but the parties did not agree to the cost for repairs. Due to the manner in which the tenancy began non move-in inspection report was prepared. No deposit was paid for this tenancy.

The landlord submits that pursuant to the agreement the tenant was responsible for paying monthly rent in the amount of \$1,500.00 commencing September 1, 2019. The landlord submits that the tenant did not pay any rent for this tenancy and that there is an arrear of \$3,096.00 for the months of September and October as well as a pro-rated amount for August, 2019.

The landlord further claims the amount of \$27.05 for utilities for the month of September and has submitted into evidence a bill showing the amount of utilities for that month. The landlord also seeks the amount of \$364.65 for various repairs, cleaning and painting to the rental unit.

The tenant disputes that there was a tenancy agreement between the parties creating any obligation to pay rent to the landlord. The tenant gave testimony regarding their

frustration with dealing with the property management company used by the landlord. The tenant agrees with the portion of the landlord's application seeking \$96.00 for the pro-rated rent for August, 2019 but disagrees with the remaining portion of the landlord's monetary claim.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant has testified that they agree with the landlord's claim for \$96.00 for the pro-rated rent for August, 2019. As such, I issue a monetary award in that amount in the landlord's favour.

I find that there was an enforceable tenancy agreement entered into by the parties as part of the addendum to the contract of purchase and sale. I do not find the tenant's position that there was no agreement between the parties to be supported in the evidence. I find that the addendum to the contract clearly sets out the tenant's right to occupy the rental property and the amount of monthly rent payable to the landlord. I do not find that the absence of a separate tenancy agreement signed by the parties to establish that there was no agreement. Furthermore, the conduct of the tenant including their providing a written Notice to End Tenancy, strongly shows that both parties were aware that this was a tenancy.

I accept that there was a tenancy agreement between the parties where the tenant was obligated to pay monthly rent in the amount of \$1,500.00 by the first of each month. I accept the undisputed evidence of the parties that the tenant paid no rent for the duration of the time they occupied the rental unit.

Section 45 of the *Act* provides that a tenant may give notice to end a tenancy effective on a date no earlier than one month after the landlord receives the notice and on the date before the day in which rent is due.

I accept the evidence that the tenant provided notice to the landlord on September 22, 2019 and find therefore that the notice was effective on October 31, 2019. I find that the tenant was obligated to pay full rent for the months of September and October, 2019 in the total amount of \$3,000.00.

However, I find that the landlord was provided written notice by the tenant on September 22, 2019 and had ample opportunity to mitigate their losses. The landlord gave evidence that the rental unit was to be occupied by the landlord's close family members, their parents who were available to occupy the rental unit as soon as it was vacant, and as such it was not a case where the landlord needed to find new occupants. Based on the evidence I find that while the landlord suffered a loss of rent for the month of September, 2019, there is insufficient evidence that there was a loss for the month of October, 2019 and consequently issue a monetary award in the amount of \$1,500.00.

I accept that the terms of the tenancy agreement set out in the amendment to the contract provides that the tenant is obligated to pay utilities for the rental suite. I accept the landlord's evidence by way of their testimony and utility bill that the amount of the utility arrear for September, 2019 is \$27.05. Accordingly, I issue a monetary award in the landlord's favour in that amount.

I find there is insufficient evidence in support of the landlord's claim for an award for repairs and painting. In the absence of a condition inspection report prepared at the start of the tenancy I find there is insufficient evidence that the need for cleaning, repairs and painting is attributable to the tenants, in their capacity as tenants under the tenancy agreement. As such, I dismiss this portion of the landlord's application.

As the landlord's application was successful the landlord may recover the \$100.00 filing fee from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,723.05, allowing the landlord to recover the unpaid rent and utilities for this tenancy and filing fees. The tenant must be served with this Order as soon as possible. Should the tenant 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.

The balance of the landlord's application and the tenant's application is withdrawn.

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: November 1, 2019

Residential Tenancy Branch