



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, OPR, FFT, CNR, RR

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 landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent 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 to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; 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 parties confirmed that they had exchanged their documentary evidence.

At the outset of the hearing, both parties confirmed that the tenant moved out on November 1, 2019 and therefore the issue of whether the tenancy is to continue no longer needs consideration, accordingly; the tenancy issue is dismissed from both parties application.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?
Is the tenant entitled to a rent reduction?
Is either party entitled to the security deposit?
Is either party entitled to the recovery of the filing fee from the other?

Background and Evidence

The landlord gave the following testimony. The tenancy began on June 1, 2017 and ended on November 1, 2019. The rent payable on the first of each month was \$1950.00. At the outset of the tenancy the tenant paid a \$500.00 security deposit which the landlord still holds. The landlord testified that the tenant withheld the October rent without reason.

The landlord testified that she issued a 10 Day Notice for Unpaid Rent or Utilities on October 3, 2019. The landlord testified that the tenant vacated the unit on November 1, 2019 without paying for October's rent. The landlord seeks a monetary order for the unpaid rent and the recovery of the filing fee for a total monetary request of \$2050.00.

The tenant gave the following testimony. The tenant testified that a water leak occurred in his unit on September 3, 2019. The tenant testified that he was unable to use the majority of his unit for the month of September. The tenant testified that he had to endure excessive noise from the restoration company's equipment and extreme heat to dry the unit out. The tenant testified that the landlord only attended on one occasion and was not receptive to discussing possible compensation for the loss of living space. The tenant testified that he would be content if both parties parted ways today and have no further dealing with one another.

Analysis

It is worth noting, both parties continually referred to numerous unresolved issues that are not part of either party's application. Despite my attempts and offers to help resolve them, the parties were unable to agree. It was explained to both parties in great detail that they are both at liberty to file their own separate application if they wish to address any of the issues not before me today. Both parties indicated that they understood.

In terms of the matter before me today, section 26 of the Act addresses the issue as follows:

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.*

The tenant acknowledged and confirmed that he did not pay the rent for October 2019. The tenant felt that he was right in his actions due to the heat and noise he had to deal with because of the repairs. I find that the tenant knowingly and willingly withheld the rent without justification. The tenant has not provided sufficient evidence to show that the repairs were as a result of the landlord being negligent or reckless.

Also, the tenant has not provided sufficient evidence to show that he was entitled to a rent reduction. It was an unfortunate set of circumstances that resulted in inconvenience for the tenant, but he was not at liberty to simply stop paying rent. Based on the above I find that the landlord is entitled to the October rent of \$1950.00. The landlord is also entitled to the recovery of the \$100.00 filing fee.

The tenant has not been successful in his application.

Conclusion

The landlord has established a claim for \$2050.00. I order that the landlord retain the \$500.00 deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$1550.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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

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 07, 2019

Residential Tenancy Branch