



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNR
Landlord: OPR MNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on June 11, 2021. Both applications were made under the *Residential Tenancy Act* (the “Act”).

The Landlord attended the hearing. However, the Tenant did not. The Landlord stated that he served the Tenant with his application and evidence by registered mail. The Landlord sent this package on March 25, 2021, and provided tracking information to corroborate this. Pursuant to section 89 and 90 of the Act, I find the Tenant is deemed to have received this package 5 days after it was mailed, on March 31, 2021.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Preliminary Matters

The Landlord testified that the Tenant has moved out of the rental unit in early April 2021. As such, he no longer needs an order of possession. I find the Landlord’s application for an order of possession, and the Tenant’s application to cancel the 10 Day Notice to End Tenancy is moot, given the tenancy is over. Accordingly, I dismiss the Tenant’s application, in full, without leave, as well as the Landlord’s application for an order of possession. Further, the Tenant’s application is also dismissed as she failed to attend the hearing to support her own application.

The Landlord requested to recover other monetary amounts, on top of rent. However, as stated in the hearing, the Landlord did not file an application for monetary matters, above and beyond unpaid rent. The Landlord is granted leave to apply for any further monetary compensation, and this proceeding will only address unpaid rent.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord testified that rent in the amount of \$1,875.00 is due on the first of each month. The Landlord provided a copy of the tenancy agreement, which shows that the Tenant was under a fixed term tenancy agreement until October 31, 2021. The Landlord stated that he still holds a security deposit in the amount of \$937.50.

The Landlord stated that the Tenant failed to pay rent on March 1, 2021, so the Landlord issued a 10 Day Notice to the Tenant on March 4, 2021, by posting it to the door of the rental unit. The Landlord stated that the Tenant emailed him that day to say she would move out of the rental unit by April 2, 2021.

The Landlord stated he never received any further rent from the Tenant, and when he attended the rental building on or around April 5, 2021, he found that the Tenant had in fact vacated. The Landlord stated that he was under the impression he could not re-rent the unit because he was waiting for the hearing, so he did not re-list/re-post the ad to rent, and it sits empty to this day. The Landlord is seeking to recover rent from March through till June.

Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I find there is insufficient evidence the Tenant had any right under the *Act* to withhold rent. With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from the Landlord's documentary evidence and testimony

before me to demonstrate that the Tenant owes and has failed to pay \$1,875.00 in rent for March 2021. I accept that the Tenant was living in the rental unit for March, and didn't pay any rent.

With respect to the unpaid rent for April through June, I do not find the Landlord is entitled to recover these amounts because there is insufficient evidence he sufficiently mitigated his loss, after he became aware the Tenant had vacated the rental unit. I note the Landlord was aware the Tenant was planning on vacating the rental unit on April 2, 2021, and he confirmed that the Tenant had vacated the unit around April 5, 2021.

I note the following portion of Policy Guideline #5 – Duty to Minimize Loss:

C. WHEN A NOTICE TO END TENANCY IS GIVEN

If a landlord issues a notice to end tenancy and is entitled to claim compensation for lost rental income, the landlord has a duty to minimize the loss by attempting to rent out the rental unit or site once the time limit for the tenant to dispute the notice expires.

If a tenant disputes the notice, the landlord is obligated to attempt to rent the unit or site after:

- the date the decision or order is received, and the time limits for a review application have passed; or,*
- if the tenant applies for a review consideration of the decision or order, the date the landlord receives the review consideration decision.*

In some situations, if a Tenant applies to cancel a Notice, and served the Landlord with their Notice of Hearing, the Landlord does not need to take steps to mitigate the lost rent until the hearing has occurred, as laid out above. However, in this case, the Landlord was aware the Tenant had vacated and abandoned the rental unit as of April 5, 2021, and was no longer planning on disputing the 10 Day Notice. It appears the Landlord was aware the Tenant was not returning as of early April, and did not take any steps to re-rent the unit and mitigate losses. I find this inaction is a breach of the Landlord's statutory duty to mitigate, after being aware the tenant had vacated and abandoned the rental unit. I dismiss the Landlord's application for rental losses for April 2021 onwards.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was partially successful in this

hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
March rent	\$1,875.00
Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$937.50)
TOTAL:	\$1,037.50

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,037.50**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: June 11, 2021

Residential Tenancy Branch