



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDCT
 OPC, OPN, MNDCL-S, FFL
 OPRM-DR, OPR-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on March 8, 2021. The Tenant applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities issued on March 6, 2021, for an order for the Landlord to comply with the *Act*, and for a monetary order for compensation for monetary loss or other money owed.

The Landlords’ Application for Dispute Resolution was made on March 25, 2021. As the Tenant had already filed a dispute of the Notice, the Landlord’s application was crossed with the Tenant’s applications to be heard at the same time. The Landlords applied to enforce a One-month Notice to End Tenancy for Cause issued on March 6, 2021, to enforce the Tenant’s Notice to End Tenancy, for a monetary order to collect an unpaid security or pet damage deposit due under the tenancy agreement, permission to retain the security deposit and to recover their filing fee.

The Landlords’ submitted a second application as a Direct Request Application made on March 22, 2021. Again, as both the Landlords and the Tenant had already filed a dispute of the Notice, the Landlord’s application was crossed with the Tenant’s applications to be heard at the same time. The Landlords to enforce a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities issued on March 6, 2021, for a monetary order unpaid rent, permission to retain the security deposit and to recover their filing fee.

The Landlords submitted an amendment to their applications on April 3, 2021, increasing their monetary claim to \$1,050.00.

The Tenant submitted an amendment to their applications on April 7, 2021, increasing their monetary claim to \$4,850.00

Both the Landlords and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlords were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all evidence and testimony 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 Matter - *End of Tenancy*

At the outset of these proceedings, both the Landlords and the Tenant agreed that this tenancy ended on April 30, 2021, when the Tenant moved out of the rental unit, and the Landlords agreed that they took back possession of the rental unit.

As this tenancy has already ended, I find that there is no reason to hear the parties submissions in regard to the Tenant's application to cancel this notice, the Landlords' applications to enforce the three notices or the Landlords application to collect an unpaid security or per damage deposit for this tenancy.

I will continue in these proceedings on the remaining monetary claims before me; the Tenant's claim for \$4,850.00 in compensation for monetary loss or other money owed, and the Landlords' claim for a monetary order in the amount of \$1,50.00 for unpaid rent.

Preliminary Matter- *Tenant's Application Withdrawn*

During these proceedings, the Tenant had indicated that they were unable to secure legal representation before this hearing, as they had hoped. The Tenant requested to withdraw their application in order to seek out legal representation for the claim.

I find that the Tenant's Application for Dispute Resolution has been withdrawn.

I will continue in these proceedings in the remaining issues contain in the Landlords' application.

Issues to be Decided

- Are the Landlords entitled to a monetary order for unpaid rent?
- Are the Landlords entitled to the return of their filing fee?

Background and Evidence

The tenancy agreement recorded that this tenancy began on March 1, 2020, as a sixteen-month fixed term tenancy that rolled into a month to month tenancy at the end of the initial fixed term. The Landlords testified that rent in the amount of \$2,950.00 was to be paid by the first day of each month, and that the Tenant had paid the full \$1,475.00 security deposit but only \$525.00 of the required pet damage deposit for this tenancy. A copy of the tenancy agreement was submitted into documentary evidence by the Landlords. Both the Tenant and the Landlords agreed that the tenancy ended on April 30, 2021.

The Landlords testified that the Tenant did not paid the full rent for April 2021, ending the tenancy with an outstanding rent amount of \$1,050.00. The Landlords are requesting a monetary order for the outstanding rent.

The Tenant agreed that they have not paid the full rent for April 2021, and that they owe the \$1,050.00 in rent under the tenancy agreement.

Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

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.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, I accept the agreed upon testimony of these parties that the rent has not been paid in full for April 2021, for this tenancy. I find that the Tenant breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlords have established an entitlement to a monetary award in the amount of \$1,050.00. I grant the Landlords permission to retain \$1,050.00 of the security deposit they are holding for this tenancy in full satisfaction of this award.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords have been successful in one of their applications, I find that the Landlords are entitled to recover one of the \$100.00 filing fees paid for this hearing. I grant permission to the Landlord to retain \$100.00 of the security deposit they are holding for this tenancy in full satisfaction of this award.

I grant permission to the Landlords to retain \$1,150.00 of the security deposit they are holding for this tenancy, consisting of \$1,050.00 in rent for April 2021 and \$100.00 in the recovery of the one of their filing fees for this hearing.

Conclusion

The Tenant's application for Dispute Resolution has been withdrawn.

The grant permission to the Landlords to retain \$1,150.00 of the security deposit they are holding for this tenancy, in full satisfaction of the awarded amounts contained in this decision.

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 15, 2021

Residential Tenancy Branch