



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT-CNR, LRE, OPR, MNR, MNDCL, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenants filed under the Residential Tenancy Act.

The landlords filed an application on July 6, 2021 is seeking orders as follows

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

On August 23, 2021 the landlord amended the above application to add a monetary claim for loss or other money owed.

The landlords filed a second application on July 20, 2021 is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application

The tenant filed an application on June 10, 2021 is seeking orders as follows:

1. To be allowed more time to dispute a notice to end tenancy;
2. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
3. To suspend or set conditions on the landlord's right to enter the rental until.

The landlords, tenant CW, and CW's father appeared. The tenant SH did not appear.

Preliminary and Procedural Issues

As SH did not appear, I must determine if SH was served in accordance with the Act.

The landlords testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on July 23, 2021. Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant SH has been duly served in accordance with the Act.

In this case the landlord's amended their application for dispute resolution on August 23, 2021 and served the tenant CW by email on August 25, 2021. I find the tenant was not deemed to have received the amended application until three days after it was sent, which was on August 28, 2021. Therefore, I find the tenant was not served at least 14 days before the hearing. Therefore, I decline to consider the landlords' amended application. The landlords are entitled to make a new application for this monetary relief.

At the outset of the hearing the parties agreed the tenancy ended on August 1, 2021. However, the parties disagreed on how the tenancy ended. The tenant stated they were locked out of the premises after being on holidays for a week and the landlords are retaining their belongings. The landlords stated that they had determined that the tenants had abandoned the rental unit and they have the right to retain the belonging until the tenants have paid all debt owed under the Act.

As the tenancy has ended, I find I do not need to consider the tenants application to cancel the Notice, or the landlords' application for an order of possession.

Issue to be Decided

Are the landlord's entitled to unpaid rent?

Background and Evidence

The tenancy began on June 1, 2020. Rent in the amount of \$1,700.00 was payable on the first of each month. A security deposit of \$850.00 and a pet damage deposit of \$850.00 (the "Deposits") were paid by the tenants.

The landlords testified that the tenants failed to pay rent for May, June, and July 2021. The landlords seek to recover unpaid rent in the amount of \$5,100.00

The tenant testified that they made two email transfers for May 2021 rent. At the hearing the tenant was given the opportunity to review their bank records to provide dates of the email transfers and to ensure they were accepted by the landlords. The tenant was unable to provide that information.

The tenant testified that they did not pay rent for June 2021, because there was a verbal agreement that the landlords would keep the security deposit and pet damage deposit.

The tenant testified that they did not pay rent for July 2021, because they were entitled to compensation for one free month of rent because they were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The landlords argued that the tenants were supposed to make payments in May 2021; however, they did not. The landlords stated that they did not agree that the tenants could use their security deposit and pet damage deposit towards June 2021 rent. The landlords stated that is also inconsistent with the tenant's written response in their application as the tenant indicates this agreement was for May not June 2021.

Analysis

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

In this case, I accept the landlord's evidence over the tenant's evidence that the tenant failed to pay rent for May 2021. The tenant although given time at the hearing to review their banking etransfer history was unable to provide the dates they said to have sent etransfers to the landlords.

Further, I find the tenant's testimony is inconsistent with their written response in their application as the tenant writes "We had a verbal agreement that the damage deposit and pet deposit will be May's rent". This statement is unreasonable if they truly paid rent for May 2021. I find the tenants failed to pay rent for May 2021. Therefore, I find the landlords are entitled to recover unpaid rent for May 2021, in the amount of **\$1,700.00.**

I also do not accept the tenant's evidence that there was a verbal agreement for the landlords to retain the Deposits for June 2021 rent. Again, this is inconsistent with the tenant's written response. Further, this is contrary to the Residential Tenancy Branch

Policy Guideline 17 which states a tenant must not apply all or part of the security deposit to rent without the **written consent** of the landlord. I find the tenant failed to pay rent for June 2021. Therefore, I find the landlords are entitled to recover unpaid rent for July 2021 in the amount of **\$1,700.00**.

I also find the tenant reason for not paying rent for July 2021 unreasonable. When a tenant fails to pay rent and is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the notice to end tenancy clearly states you either must pay the outstanding rent in 5 days or vacate the premises on the effective vacancy date in the notice.

It is not reasonable for the tenant to believe that they would be compensated by being allowed to stay for an additional month and rent free. The Act does not give compensation to a tenant, when in violation of the Act by failing to pay rent. I find the tenants failed to pay rent for July 2021. Therefore, I find the landlords are entitled to recover unpaid rent for July 2021 in the amount of **\$1,700.00**.

I find that the landlords have established a total monetary claim of **\$5,200.00** comprised of the above-described amounts and the \$100.00 fee paid for this application. I note that the landlords have paid the amount of \$200.00 to file both applications; however, I have declined to award the second filing fee as they could have simply amended their first application.

I order that the landlords retain the security deposit of **\$850.00** and pet damage deposit of **\$850.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$3,500.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenant's application is dismissed. The landlords are granted a monetary order and may keep the Deposits in partial satisfaction of the claim and the landlords are granted a formal order for the balance due

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: September 13, 2021

Residential Tenancy Branch