



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, PSF, OLC, LRE, OPR, MNR, FFL

Introduction

This hearing was convened in response to applications by the landlords and the tenant.

The landlords' application 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's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice");
2. To have the landlord provided services or facilities required by the tenancy agreement or law;
3. To suspend or set conditions on the landlord's right to enter the rental unit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary and Procedural matters

In this case, the landlords were granted an order of possession on June 23, 2022. The tenant was removed by the Bailiffs on June 29, 2022. Therefore, I find I do not need to consider the landlords' application for an order of possession as the tenancy has legally ended.

I find I do not need to consider the tenant's application as the tenancy has ended and the issues identified are only relevant if the tenancy was ongoing.

Issue to be Decided

Are the landlords entitled to a monetary for unpaid rent?

Background and Evidence

The tenancy began on May 1, 2022. Rent in the amount of \$3,275.00 was payable on the first of each month. A security deposit of \$1,600.00 was paid by the tenant. The tenancy ended on June 29, 2022.

The landlords testified that the tenant only paid \$1,200.00 toward May 2022 rent and paid no rent for June 2022.

The landlords testified that they did agree that the tenant could deduct \$350.00 from May 2022, which was \$200.00 for cleaning, \$75.00 for a misunderstanding regarding smoking and a further \$75.00 as the landlord had items stored on the property.

The landlords testified that the tenant was entitled to deduct \$75.00 from June 2022, which was for the misunderstanding regarding smoking.

The tenant testified that the landlord refused to accept the balance of rent for May 2022 as they just wanted them to vacate the property due to the flood. The tenant stated they did not pay rent for June 2022 as they had filed their application.

The landlords stated that they did not refuse rent and that the tenant could have sent an e-transfer or cheque to them.

Analysis

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

- 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.

In this case, the tenant only paid the amount of \$1,200.00 for May 2022 rent. I find the tenant breached the Act when they failed to pay the rent due under the terms of their tenancy agreement. This leave a balance due of \$2,075.00 for May 2022. The parties agreed that the tenant was given credit of \$350.00 for May 2022. Therefore, I find the landlords are entitled to recover unpaid rent for May 2022, in the amount of **\$1,725.00**.

The tenant failed to pay rent for June 2022 in the amount of \$3,275.00. The tenant was authorized to deduct \$75.00. I find the tenant breached the Act when they failed to pay the rent. Therefore, I find the landlords are entitled to recover unpaid rent for June in the amount of **\$3,200.00**.

I find that the landlords have established a total monetary claim of **\$5,025.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

In this case, both parties filed their applications for dispute resolution prior to the tenancy ending. As the tenancy has now ended, I find it reasonable that the monetary award will be offset with the security deposit, pursuant to section 38(4)(b) of the Act. Therefore, I order that the landlords retain the security deposit of **\$1,600.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$3,425.00**.

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

Conclusion

The tenant's application is dismissed as the tenancy legally ended. The landlords are granted a monetary order for the unpaid rent and are authorized to retain the security deposit in partial satisfaction of their claim. The landlords are granted a formal order for the balance due in the amount of \$3,425.00.

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: August 30, 2022

Residential Tenancy Branch