



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, LRE, LAT, OLC
OPR-DR, MNR-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 August 23, 2022. The Tenant applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent (the “Notice”) dated August 13, 2022, for more time to file to dispute the Notice, for an order to suspend or set conditions on the landlord’s right to enter the rental unit, for permission to change the locks, and for an order that the Landlords comply with the Act.

The Landlord’s application for Dispute Resolution was made on September 13, 2022. The Landlord applied for an order of possession to enforce a 10-Day Notice for Unpaid Rent (the Notice) dated August 2, 2022, a monetary order for unpaid rent, and to recover the cost of filing the application.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

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 Matters- Related Issues

I have reviewed the Tenant's application, and I note that they have applied to cancel a Notice to end tenancy as well as one other issue. I find that these other issues are not related to the Tenant's request to cancel the Notice. As this matter does not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing the Tenant's claims for an order to suspend or set conditions on the landlord's right to enter the rental unit, for permission to change the locks, and for an order that the Landlord comply with the *Act*.

I will proceed with this hearing on the Tenant's claim to cancel the 10-Day Notice, for an extension in time to apply to dispute the Notice and the Landlord's application.

Preliminary Matter - Tenant Cautioned

During the hearing, the Tenant was cautioned regarding personal conduct, outbursts, the use of inappropriate language and the interruption of the other parties' testimony.

Both the parties to this dispute were advised of the expected appropriate conduct during these proceedings and advised that they could be removed from the hearing for inappropriate behaviour.

Preliminary Matter - Landlord Cautioned

During the hearing, the Landlord and Tenant testified that the Landlord had collected a \$2,200.00 security deposit for this tenancy, the equivalent of one full month's rent under this tenancy agreement.

The Landlord was advised of section 19 of the *Act* which states the following:

Limits on amount of deposits

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

I find that the Landlord was in breach of section 19 of the *Act* when they collected a security deposit that was the equivalent of a full month's rent under the tenancy agreement.

The Landlord testified that they were unaware of the limit on deposit under the *Act* and gave assurance that they would not collect a security deposit in excess of half a month's rent again.

Issues to be Decided

- Should the Notices to End Tenancy be cancelled?
- If not, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy agreement recorded that the tenancy began on March 10, 2022, as an eleven-month and 19-day fixed-term tenancy. Rent in the amount of \$2,200.00 was to be paid by the first day of each month, and the Tenant paid the Landlord a \$2,200.00 security deposit. Both the Landlord and the Tenant submitted a copy of the Tenancy agreement into documentary evidence.

At the outset of these proceedings, the Tenant testified that they had moved out of the rental unit as of September 12, 2022.

The Landlord testified that the Tenant was last seen on the rental property on September 29, 2022.

The Landlord testified that the tenancy had ended with unpaid rent outstanding in the amount of \$4,400.00, consisting of \$2,200.00 for August and \$2,200.00 for September 2022.

The Tenant agreed that they had not paid the rent for August 2022 but argued that they had moved out of the rental unit by September 12, 2022 and should not have to pay for the full month.

The Tenant was advised during these proceedings that a tenancy could not end mid-month and that they would owe September rent in full if they had not moved out before at rental month began.

Analysis

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

I accept the testimony of these parties, that the Tenant had moved out of the rental unit by the end of September 2022. I find that the Tenant moved out in accordance with the Landlord's Notice to end the tenancy.

I find that this tenancy has already ended in accordance with the *Act* and that there is no requirement for an Order of Possession. Therefore, I dismiss the Tenant's application to cancel the Notice to end tenancy and the Landlord's application for an Order of Possession of the rental unit.

I accept the agreed-upon testimony of both parties that the Tenant has not paid the outstanding rent for August and September 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 Landlord has established an entitlement to a monetary award in the amount of \$4,400.00, comprised of \$2,200.00 in rent for August 2022, and \$2,200.00 in rent for September 2022. I grant the Landlord permission to retain the security deposit they are holding for this tenancy in partial 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 Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for their application.

I grant the Landlord a monetary order in the amount of \$2,300.00; consisting of \$4,400.00 in unpaid rent, \$100.00 for the recovery of the filing fee, less the security deposit of \$2,200.00 that the Landlord is holding for this tenancy.

Conclusion

The Tenant's application to cancel the Notice is dismissed.

I grant the Landlord a **Monetary Order** in the amount of **\$2,300.00**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: January 13, 2023

Residential Tenancy Branch