



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

For the tenant: CNR-MT MNRT MNDCT OLC RP RR FFT
For the landlord: OPR-DR FFL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession for unpaid rent or utilities and paid a filing fee. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 5, 2022 (10 Day Notice), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for regular repairs to the unit, site or property, for a rent reduction, for a monetary claim of \$12,500 for emergency repairs and for money owed or compensation under the Act, regulation or tenancy agreement, and for the filing fee.

The tenant, the landlord and an agent/translator for the landlord, HR (agent) attended the teleconference hearing. An opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

RTB Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated many matters of dispute on their application, the most urgent of which is the application is to cancel the 10 Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 10 Day Notice and to recover the filing fee at this proceeding. The balance of the tenant's application is **dismissed, with leave to re-apply**.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Furthermore, pursuant to section 62(3) of the Act, I have removed all tenants from the tenant application that were not listed on the tenancy agreement submitted in evidence.

Finally, at the outset of the hearing the parties confirmed that the tenant vacated the rental unit since both applications were filed. As a result, I will not address the order of possession as the landlord confirmed they already have possession back of the rental unit.

Issues to be Decided

- Does the Act require a monetary order for unpaid rent for the landlord and if so, how much?
- Is either party entitled to recover their filing fee under the Act?

Background and Evidence

A copy of the written tenancy agreement was submitted in evidence. A month-to-month tenancy began on November 1, 2019. Monthly rent was \$1,800 and was due on the first day of each month. The tenant paid a security deposit of \$900 and a pet damage deposit of \$450 at the start of the tenancy, which the landlord continues to hold (\$1,350 combined deposits).

The parties disagreed on the day the tenant vacated the rental unit. After giving the tenant several minutes to determine the date that they sent an email to the landlord advising that they were vacating the rental unit, the tenant stated that they emailed the landlord on November 17, 2022. The landlord stated that that email did not confirm the

tenant was vacating, and that the email actually was the landlord asking the tenant if they had moved out yet, and the tenant replied, “not yet but soon.” The landlord testified that they deemed the rental unit abandoned as of December 6, 2022.

The tenant admitted that they did not return the rental unit keys to the landlord and instead “left them inside the rental unit” yet did not advise the landlord that the keys were inside the unit.

As the tenant vacated since filing their application, the tenant’s application was dismissed without leave to reapply. The landlord was asked how much rent was owing and the landlord stated \$5,600 comprised of \$200 owing for September 2022, \$1,800 owing for October, 2022, \$1,800 owing for November 2022 and \$1,800 owing for December 2022. The tenant was asked if they paid the \$200 portion owing for September 2022 and replied that they were “not sure” and then later in the hearing changed their testimony to that they were “pretty sure” they paid it. The tenant admitted that they did not pay rent for October 2022 or any month thereafter.

The landlord testified that they would like to offset any amount owing with the tenant’s combined deposits of \$1,350.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 26 of the Act that applies and states:

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.

[emphasis added]

I find the testimony of the tenant to be inconsistent and therefore I prefer the testimony of the landlord that was consistent throughout the hearing. Based on the above, I find the tenant owes \$200 for September 2022 rent, plus \$1,800 for October 2022 and \$1,800 for November 2022 rent. I make no finding about December 2022 rent as the

email was not before me from either party, so the landlord has liberty to apply for loss of December 2022 rent if need be under the Act.

Section 55(1.1) of the Act applies and states:

If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, **the director must grant an order requiring the payment of the unpaid rent.**

[emphasis added]

I have reviewed the 10 Day Notice and find that it complies with section 52 of the Act, and I have dismissed the tenant's application as they have already vacated the rental unit before the hearing. Therefore, I find I must grant the landlord **\$5,600** for unpaid rent comprised of \$200 for September 2022, \$1,800 for October 2022 and \$1,800 for November 2022.

As the landlord's claim had merit, I also grant the landlord **\$100** pursuant to section 72 of the Act for the recovery of the cost of the filing fee.

Based on the above, I find the landlord has established a total monetary amount of **\$5,700**, which includes rent arrears of \$5,600 plus the \$100 filing fee.

I find the tenant's combined deposits of \$1,350 have accrued \$4.18 in interest and as such, I find the landlord is holding a total combined deposits with interest of **\$1,354.18**.

I authorize the landlord to retain the tenants' full combined deposits including interest which totals \$1,354.18, in partial satisfaction of the landlord's claim. **I grant** the landlord a monetary order pursuant to section 67 of the Act for the balance owing by the tenant to the landlord in the amount of **\$4,345.82**.

As the tenant's application fails, I decline to grant the tenant their filing fee.

I caution the tenant not to breach section 26 of the Act in the future.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application has merit and is successful.

The landlord has been authorized to retain the combined deposits with interest as ordered above. The landlord is granted a monetary order for the balance owing by the tenant to the landlord in the amount of \$4,345.82. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenant is reminded that they can be held liable for all costs related to enforcement of the monetary order, including court costs.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 27, 2023

Residential Tenancy Branch