



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, OPB, MNR, MND, MNSD, MNDC, FF, O
MT, CNR, CNC

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities, for cause and for breach of an agreement; as well as for a monetary order for unpaid rent; for damage to the unit, site or property; for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for more time to dispute a notice to end tenancy than permitted by the *Act*, for an order cancelling a notice to end tenancy for unpaid rent or utilities and for an order cancelling a notice to end tenancy for cause.

Both parties provided evidentiary material in advance of the hearing, however no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the conference call hearing was the landlord. Therefore, I hereby dismiss the tenant's application without leave to reapply.

The landlord testified that the tenant was served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on April 17, 2014 and has provided a copy of the Canada Post receipt bearing that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord gave affirmed testimony, which is considered in this Decision in addition to the evidentiary material provided. The landlord was also permitted to send to me by facsimile a copy of the tenancy agreement after the hearing concluded.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for cause?
- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for breach of an agreement?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on November 1, 2013 and the tenant abandoned the rental unit at the end of May, 2014. The landlord resides in the upper unit of the rental house and the rental unit is the basement suite. The tenant verbally advised the landlord that he was moving out at the end of May and got in his motor home and drove away. The tenant has not returned and the landlord testified that he has definitely moved out.

Rent in the amount of \$650.00 per month was payable in advance on the 1st day of each month, and the landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but a copy has not been provided. The tenant has not paid any rent for the months of April or May, 2014 and the landlord requests a monetary order. Further, the tenant left garbage in or around the rental unit and it will cost the landlord at least \$200.00 to have it hauled away and for dump fees, but the garbage is still in the rental unit and no evidence of its costs have been provided.

The landlord collected a security deposit from the tenant at the outset of the tenancy in the amount of \$325.00 which is still held in trust by the landlord. The landlord requests

to keep the security deposit in partial satisfaction of the claim. No move-in or move-out condition inspection reports were completed.

Analysis

Firstly, with respect to the landlord's applications for an Order of Possession, the landlord testified that he is certain that the tenant has moved out. The landlord has not provided any evidence of having served the tenant with a notice to end tenancy of any kind. However, since the tenant has not attended this hearing after making an application for more time to dispute a notice to end tenancy, I find that the landlord is in legal possession of the rental unit and the tenancy has ended. The applications for an Order of Possession are denied.

I have also reviewed the tenancy agreement, and I find that the signature of the tenant does not remotely match the signature of the tenant on the Tenant's Application for Dispute Resolution or in the tenant's application to waive the filing fee. The landlord did not make any representations at the hearing regarding anyone else signing the tenancy agreement on behalf of the tenant, and I am not satisfied that the agreement was made by the tenant. In the circumstances, I find that the landlord has failed to establish a tenancy with the tenant for any specific amount and the landlord's application for a monetary order for unpaid rent is dismissed.

With respect to the landlord's application for damages, the landlord has not provided any evidence of the costs associated with cleaning the rental unit or dump fees. The *Residential Tenancy Act* requires that a landlord ensure that move-in and move-out condition inspection reports are completed, and the regulations state that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. In the absence of such evidence, and in the absence of any evidence related to costs, the landlord's application cannot succeed.

Since the landlord has not established a monetary claim as against the tenant, the landlord is not entitled to keep any part of the security deposit, and that application is hereby dismissed.

Since the landlord has not been successful with the application, the landlord is not entitled to recovery of the \$50.00 filing fee for the cost of filing, and that application is dismissed.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

The landlord's application is hereby dismissed in its entirety without leave to reapply.

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 12, 2014

Residential Tenancy Branch

