



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, OPC, MND, MNR, MNSD, FF
CNC, CNR, MNDC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord and the Tenant. The Landlord applied for an Order of Possession based on a notice to end tenancy for unpaid rent and for cause. The Landlord also applied for a Monetary Order for: unpaid rent; damage to the rental unit; to keep the Tenants’ security deposit; and, recovery of the filing fee.

The Tenant applied to cancel both notices to end tenancy and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement.

The Landlord appeared for the hearing with an advocate; however, only the Landlord provided affirmed testimony. Both Tenants appeared for the hearing with an advocate; the male Tenant provided affirmed testimony and the Tenants’ advocate only assisted the male Tenant during the hearing. On the instruction of the male Tenant and the Tenants’ advocate the female Tenant was asked to leave the hearing at the start.

The parties confirmed service and receipt of their Applications. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. I have considered the evidence provided by the parties in this case but I have only documented the evidence which I relied upon to making findings in this decision.

Preliminary Matters

The Tenant confirmed that they were no longer residing in the rental suite as he had been instructed by the police not to return to the rental unit in April 2015.

The Landlord explained that the Tenant had abandoned the rental unit in March 2015 after not paying rent and confirmed that the rental unit was being now rented by a new renter. The parties confirmed that there was no requirement for me to make a determination on the Landlord's request for an Order of Possession or for me to cancel the notices to end tenancy. Therefore, I dismissed these portions of the Tenant's and Landlord's Application as these are now moot issues.

The Tenant indicated that in relation to his monetary claim he had not provided any documentary or photographic evidence of this to anyone prior to the hearing. However, the Tenant indicated that he had evidence of this on his phone and wanted to an opportunity to present this in relation to his claim. As a result, the Tenant withdrew the monetary portion of his Application which was not dealt with in this hearing. However, the Tenant is at liberty to re-apply for this aspect of his claim.

The Landlord's Application disclosed a monetary claim against the Tenant for the amount of \$1,925.00. The Landlord explained that this amount related to unpaid rent and to retain the Tenants' security deposit. The Landlord had indicated on her Application that she wanted to claim for damage to the rental unit. However, the Landlord did not disclose on the Application what amounts she was seeking from the Tenants for this damage and any evidence to verify these losses.

An applicant must put the respondent on sufficient notice of their claim and what the amounts relate to so that the other party has the ability to respond to the claim accordingly. Furthermore, Rule 2.5 requires that to the extent possible an Application should disclose a detailed calculation of any monetary claim being made against the respondent.

Therefore, based on the foregoing, I find the Landlord failed to make an Application and put the Tenants on sufficient notice of a monetary claim for damages to the rental suite. Therefore, I dismissed this portion of the Landlord's Application. However, the Landlord is at liberty to claim for damages to the rental suite through a new Application.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent for February, March and April, 2015?
- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of her claim for unpaid rent?

Background and Evidence

Both parties agreed that this tenancy started between the Landlord and female Tenant in June 2014 on a month to month basis. Rent in the amount of \$550.00 under a written tenancy agreement was payable on the first day of each month. A security deposit was transferred to this tenancy in the amount of \$275.00 which the Landlord still retains. The male Tenant joined the tenancy as a co-tenant in January 2015.

The Landlord testified that on February 1, 2015 the Tenants failed to pay rent in the amount of \$550.00. The Landlord attempted to contact the male Tenant by phone but the Tenant's phone was out of service and the Landlord was out of the country. The Landlord testified that she had an agent go to the rental unit but there was no answer.

The Landlord testified that she attended the rental suite on March 23, 2015 only to discover an unknown occupant residing at the rental suite with his dogs; the Landlord provided photographic evidence of the dogs. The occupant informed the Landlord that the male Tenant had left the tenancy and had given him the rental agreement to take over and had sold him the majority of Tenant's furniture.

The Landlord testified that she informed the occupant that she did not have a tenancy with him and that he needed to leave the rental suite. The Landlord explained that she received a phone call from the Tenant on March 26, 2015 during which he verbally abused her on the phone about what was going to happen with the Tenant's boat which was still at the property. The Landlord testified that this was the first communication from the Tenant since February 2015 as the Tenant had not provided any contact or forwarding address.

The Landlord explained that she attended the rental suite on March 27, 2015 at which point the occupant had left, removed all the belongings inside the rental unit and left the doors wide open. The Landlord testified that after being instructed by the Residential Tenancy Branch, she posted a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") and a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on the Tenant's door on March 27, 2015. The 10 Day Notice had an effective date of April 8, 2015 and the 1 Month Notice had an effective date of April 30, 2015. Both notices to end the tenancy were provided into evidence prior to the hearing.

The Landlord testified that on April 8, 2015 they contacted the Residential Tenancy Branch who informed them that they could now take possession of the rental suite because it had been deemed to be abandoned. The Landlord changed the locks to the rental unit as there was evidence that the rental suite had been broken into because the

side window was broken. No cleaning had been done of the rental unit and the Landlord provided photographic evidence to verify this.

The Landlord testified that she was able to locate the Tenant to his new address and informed him via a third party that he should contact her to make arrangements to remove his boat from the rental property which he has since failed to do.

The Landlord testified that she put 'no trespassing' signs on the property because there was malicious damage being caused to the exterior of the property by the Tenant when he came to recover his boat. The Landlord feared that the Tenant would come back and cause further damage which was the reason for the sign.

The Landlord contacted the police on April 15, 2015 who then informed the Tenant that he was to stay away from the rental unit as the Landlord had assumed possession of it. The Landlord claims three months of unpaid rent in the amount of \$1,650.00. The Landlord also indicated that she was willing to work with the Tenant on arranging a time and date for the Tenant to remove his boat from the rental property.

The Tenant testified that he had left the rental suite in February 2015 in order to receive cancer treatment and had left the rental suite with a friend who was the house sitter. The Tenant explained that he intended to return to the rental unit; however, when he did he was not allowed to do so by the police.

In relation to the rent, the Tenant testified that he had problems with payments he was receiving for a disability he had and this was the reason why he was not able to pay for February 2015 rent. The Tenant confirmed that February 2015 rent had still not been paid.

In relation to unpaid rent claimed by the Landlord for March 2015, the Tenant testified that he had deposited the rent into the Landlord's bank account. The Landlord denied this claim. When the Tenant was asked to produce evidence of March 2015 rent payment the Tenant stated that he had no evidence of this.

The Tenant stated that he did not pay rent for April 2015 because he was not allowed back to the rental unit by police. However, the Tenant did acknowledged receipt of both notices to end tenancy because he made an Application to dispute them on April 1, 2015 and registered mailed the paperwork for this hearing to the Landlord on April 13, 2015. The Landlord made her Application for a monetary claim on May 7, 2015 in response to the Tenant's Application.

Analysis

In this case I must only make findings in relation to the Landlord's claim for unpaid rent. As a result, I turn my mind to the evidence relating to this claim. Section 26(1) of the Act states that a tenant must pay rent when it is due under a tenancy agreement whether or not a landlord complies with the Act. Section 46(4) also explains that within five days of receiving a 10 Day Notice, a tenant may pay the overdue rent or dispute the 10 Day Notice.

In relation to the Landlord's claim for February 2015 unpaid rent, I find the Landlord is eligible for this amount as the Tenant acknowledged that this had not been paid. In relation to the March 2015 unpaid rent, the Tenant claimed that he had paid rent by depositing it into the Landlord's bank account. However, the Tenant was unable to provide evidence to corroborate this claim. A transaction of this nature claimed by the Tenant would have likely resulted in some verifiable evidence to prove that it took place; such evidence would have also been considered vital and prudent for the Tenant to produce in response to the Landlord's claim for unpaid rent. Therefore, I find that the Tenants failed to provide sufficient evidence to show that March 2015 rent had been paid. As a result, I award this to the Landlord.

In relation to the Landlord's claim for May 2015 rent, I make the following findings. The Landlord issued the Tenant with the 10 Day Notice on March 27, 2015. The Tenant disputed the 10 Day Notice on April 1, 2015, being within the five day time limit stipulated by the Act. However, the Tenants were already in rental arrears for the previous months and had five days to make the rent payment or provide evidence that they had authority to withhold rent under the Act.

While the Tenant did make his Application within the five day time limit, the Tenant failed to prove that he had authority to withhold and not pay his rent. The Tenant writes in his Application at the time of making it that the Landlord had caused damage to his personal property. However, I find that this is not a sufficient reason to withhold rent under the Act.

The Tenant claims that he was not allowed back to the rental unit by police. However, I find that the evidence shows that the police informed the Tenant on April 15, 2015 which was a time after the effective date of the 10 Day Notice. I find the Landlord's evidence that the Tenants had abandoned the rental unit plausible; the Tenants had not paid rent and had not given any indication to the Landlord that they intended to return to the property.

The Landlord was faced with a situation where the occupant of the rental unit had explained that the tenancy had been assigned to him and there was evidence that the occupant was residing in the rental unit rather than being present for the purposes of looking after the rental suite on behalf of the Tenant.

The Act requires that an assignment or sublet of a rental unit requires the Landlord's consent in writing. Therefore, I find that the Landlord acted reasonably in assuming the rental suite had been abandoned by the Tenant on March 23, 2015 when she visited the rental unit. Furthermore, the Landlord pursued remedies under the Act by serving the Tenant with notices to end the tenancy to end the tenancy in accordance with the Act. While the Tenant did dispute these notices, the paperwork relating to the Tenant's Application was not served to the Landlord until the effective date of the 10 Day Notice had passed, by which time the Landlord had taken possession of the rental suite.

I find the Tenant had breached the Act by not paying his rent and as a result, I find the Tenants are liable for the resulting losses of the Landlord. Policy Guideline 3 to the Act on claims for loss of rent explains that if a month to month tenancy is ended by the landlord for nonpayment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.

The effective date of the 10 Day Notice was not until April 8, 2015 and I find that the Landlord did not receive full possession and control of the rental unit until after the effective date of the 10 Day Notice. The Landlord testified that she was able to mitigate rental loss by re-renting the unit for May 2015. Therefore, I find that the Landlord is entitled to unpaid and loss of rent for April, 2015.

As a result, I find the total amount awarded to the Landlord for unpaid rent is **\$1,650.00** (\$550.00 x 3). As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenants the **\$50.00** filing fee. Therefore, the total amount awarded to the Landlord is **\$1,700.00**.

As the Landlord already holds \$275.00 in the Tenants' security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monterey Order for the remaining amount of **\$1,425.00 (\$1,700.00 - \$275.00)**. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court. Copies of this order are attached to the Landlord's copy of this decision.

In relation to the return of the Tenant's boat, the parties agreed that they will meet at the rental unit on May 26, 2015 at 11:00 a.m. in order for the Tenant to remove his boat from the property. I have made no legal findings in relation to the return of personal property as this was not a matter before me in any of the Applications.

Conclusion

The Tenants have breached the Act by not paying rent. Therefore, the Landlord can keep the Tenants' security deposit and is issued with a Monetary Order for the remaining balance of **\$1,425.00**, pursuant to Section 67 of the Act.

The Landlord's claim for an Order of Possession is dismissed. The Landlord's claim for damage to the rental unit is dismissed with leave to re-apply. The Tenant's claim to cancel the notices to end tenancy is dismissed. The Tenant's monetary claim is dismissed with leave to re-apply.

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: May 24, 2015

Residential Tenancy Branch

