



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNDC, FF; CNR, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

This hearing also dealt with the tenants' cross-application against landlord JJ ("landlord") only, pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated August 6, 2015 ("10 Day Notice"), pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 28 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she also had authority to represent her husband, "landlord SJ," also named in this Application, as an agent at this hearing.

The landlord testified that the tenants were served with the landlords' application for dispute resolution hearing package ("Application") on August 26, 2015, by way of registered mail to the rental unit. The landlord confirmed that the tenants were still residing in the rental unit at the time that the Application was mailed. The landlord provided a Canada Post receipt and tracking number to confirm service. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlords' Application on August 31, 2015, five days after its registered mailing.

At the outset of the hearing, the landlord testified that she wished to withdraw the landlords' application for an order of possession for unpaid rent, a monetary order for damage to the rental unit and a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement. The landlord stated that the tenants had vacated the rental unit. The landlord confirmed that she applied prematurely for the above monetary orders prior to the tenants moving out, and that she had properly applied for these orders in a separate application to be determined at a future hearing on April 26, 2016. The file number for that hearing appears on the front page of this decision. The landlord confirmed that unpaid rent for September and October 2015 would be pursued at the future hearing, as the landlords did not apply for these amounts in their Application for this current hearing. Accordingly, these portions of the landlords' application are withdrawn.

Preliminary Issue – Dismissal of Tenants' Application

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding: The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenants' participation in this hearing, I order the tenants' entire application dismissed without leave to reapply.

Issues to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recover the filing fee for this Application from the tenants?

Background and Evidence

The landlord testified that this tenancy began in June 2012 and ended on October 5, 2015. Monthly rent in the amount of \$850.00 was payable on the first day of each month. No security deposit was required or paid by the tenants. The landlord testified that the tenants vacated the rental unit and returned the keys to the landlord on October 5, 2015. The landlord confirmed that no written tenancy agreement exists for this tenancy, as only a verbal agreement was reached.

The landlords seek a monetary order of \$1,700.00 for unpaid rent. The landlord stated that rent of \$850.00 is unpaid for each of July and August 2015. The landlord stated that no partial rent payments were made by the tenants. The landlords also seek to recover the \$50.00 filing fee paid for this Application.

Analysis

Section 26 requires that rent be paid on the date indicated in the tenancy agreement. In this case, the landlord testified that rent was due on the first day of the month, as per the parties' verbal tenancy agreement. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The landlord testified that the tenants failed to pay rent totalling \$1,700.00 from July to August 2015, while they were still residing in the rental unit. Therefore, I find that the landlords are entitled to \$1,700.00 in rental arrears for the above period.

As the landlords were successful in this Application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for their Application.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,750.00 against the tenants as follows:

Item	Amount
Unpaid July 2015 Rent	\$850.00
Unpaid August 2015 Rent	850.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$1,750.00

The landlords are provided with a monetary order in the amount of \$1,750.00 in the above terms and the tenant(s) must be served with this Order as soon as possible.

Should the tenant(s) 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.

The landlords' Application for an order of possession for unpaid rent, a monetary order for damage to the rental unit, and a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, is withdrawn.

The tenants' entire application is dismissed 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: October 22, 2015

Residential Tenancy Branch

