



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 32 minutes. The male landlord and the female landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The male landlord testified that the tenants were served with the landlords' application for dispute resolution hearing package ("Application") on January 21, 2016 by way of registered mail. The male landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlords' Application on January 26, 2016, five days after its registered mailing.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' Application to correct the spelling of the female landlord's surname, as requested by the male landlord, as I find no prejudice to the tenants in doing so.

At the outset of the hearing, the landlords confirmed that the tenants had already vacated the rental unit and that no order of possession was required. Accordingly, this portion of the landlords' Application is 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 male landlord testified that this tenancy began on October 15, 2015 and was for a fixed term to end on June 30, 2016, but the tenants were permitted to vacate early if they provided one month's notice to the landlords, as indicated on the tenancy agreement. The female landlord stated that this was essentially a "month-to-month tenancy." The landlords provided a copy of the written tenancy agreement after the hearing, at my request, as they had not previously provided a copy. They stated that the tenants already had a copy of the tenancy agreement. I received and considered the written tenancy agreement in this decision. It confirms the landlords' testimony that one month's notice was required if the tenants wished to vacate the rental unit.

The male landlord stated that monthly rent in the amount of \$1,300.00 was payable on the first day of each month. The male landlord stated that no security deposit was required to be paid by the tenants to the landlords. The female landlord confirmed that the tenants vacated the rental unit on January 26, 2016. The landlords confirmed that they entered the rental unit on January 26, 2016, but they were not required to perform any repairs. They said that the tenants left the unit in good condition and they completed very little cleaning, which was not really required.

The landlords seek a monetary order of \$3,900.00 total for unpaid rent from December 2015 to February 2016 inclusive. The male landlord claimed that the tenants did not pay any rent for the above months. The landlords stated that they were seeking a loss of rent for February 2016 because the tenants did not provide one month's notice to vacate. They also noted that they posted an advertisement on one website in the week after the tenants vacated and that the place is currently not re-rented, although some showings have taken place. They said that they are looking for a short term rental during the summer months for this unit.

The landlords are also seeking to recover the \$100.00 filing fee for their Application from the tenants.

Analysis

Unpaid Rent for December 2015 and January 2016

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* ("*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 landlords provided undisputed evidence that the tenants failed to pay rent totalling \$2,600.00 from December 2015 to January 2016. Therefore, I find that the landlords are entitled to \$2,600.00 in rental arrears for the above period. I find that the landlords are entitled to all of January 2016 rent, even though the tenants left on January 26, 2016, because rent is due on the first day of each month, the tenants occupied the rental unit for most of January 2016, and the landlords are entitled to a reasonable period of at least a few days to inspect that the unit was in good condition, did not require repairs and to advertise and re-rent the unit.

Loss of Rent for February 2016

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlords must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Although the landlords said this was a fixed term tenancy, they indicated that the tenants could leave earlier if they gave one month's notice. Based on the female landlords' testimony and the written tenancy agreement, it appears that this was a month-to-month rather than a fixed term tenancy. The landlords provided a 10 Day Notice to the tenants to vacate the unit and presumably the tenants vacated on January 26, 2016, due to this notice. However, the landlords could not locate the notice during

this hearing, nor provide the date of the notice or the effective move-out date. The landlords did not provide a copy of the notice for this hearing.

I find that the landlords failed to provide the exact date when they began advertising the unit for re-rental. The landlords failed to provide a copy of their rental advertisement. The landlords still have not re-rented the unit because it is usually a short-term summer rental. I find that the landlords failed to satisfy the above four-part test. Therefore, on a balance of probabilities and for the reasons stated above, I dismiss the landlords' claim for \$1,300.00 for a loss of February 2016 rent.

As the landlords were only partially successful in this Application, I find that they are not entitled to recover the \$100.00 filing fee paid for their Application.

Conclusion

The landlords' Application for an order of possession and to recover the filing fee is dismissed without leave to reapply.

I issue a monetary order in the landlords' favour in the amount of \$2,600.00 against the tenants. 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.

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: March 02, 2016

Residential Tenancy Branch

