



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* ("the Act") for an Order of Possession 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, pursuant to section 72 .

While the landlord SG ('landlords') attended the hearing by way of conference call, the tenants did not. SG was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

SG testified that the tenants were personally served with the landlords' application for dispute resolution hearing package on July 6, 2017. The landlords provided written confirmation of the proof of service in their evidence. In accordance with section 89 of the *Act*, I find that the tenants were deemed served with the landlords' application.

The landlords testified that the tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 23, 2017("10 Day Notice"), by way of posting to the rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on June 26, 2017, three days after its posting.

The landlord SG indicated in the hearing that he had discovered the property to be abandoned, and the tenants had moved out on or about August 25, 2017. The landlord SG indicated that the landlords were no longer seeking an Order of Possession, and withdrew this portion of their application.

Although the landlords applied for a monetary Order of \$275.00 in their initial claim, since they applied another \$1,100.00 in outstanding rent has become owing that was not included in their application. As I find it reasonable that the tenants were aware that payment of rent is required under section 26(1) of the *Act*, I have accepted the landlords' request to amend their original application from \$275.00 to \$1,375.00 to reflect this additional unpaid rent that became owing by the time this hearing was convened.

Preliminary Issue—Service of Amended Monetary Claim & Evidence

The landlords also applied to amend the application to reflect an additional \$700.00 claim in damage left by the tenants after they had moved out. The landlords included some black and white pictures to support their claim. The landlords were not able to confirm that this evidence and amendment were served to the tenants as the landlord's agent discovered the tenants had moved out on August 25, 2017.

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

The landlords had not served the tenants in a manner required by section 89(1) of the *Act*. I am not satisfied that the tenants were properly served with the landlord's amendment and evidence. Accordingly, I dismiss this portion of the landlords' monetary claim with leave to reapply, and the evidence is excluded for this hearing.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover their filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlords testified regarding the following facts. This fixed-term tenancy began on April 1, 2017, with monthly rent in the amount of \$550.00 payable on the first day of each month. The landlords hold a security deposit in the amount of \$275.00 for this tenancy. The landlords discovered that the tenants had moved out on or about August 25, 2017.

The landlords issued the 10 Day Notice on June 23, 2017 as the tenants failed to pay \$275.00 in outstanding rent by June 1, 2017. The tenants have not paid any rent since the 10 Day Notice was issued, and owe \$275.00 for June 2017 and \$550.00 each for the months of July and August 2017. The total outstanding rent is \$1,375.00. The landlords are seeking a monetary order for the unpaid rent, and recovery of the filing fee.

Analysis

The landlords provided undisputed evidence at this hearing, as the tenants did not attend.

Section 26(1) of the *Act* requires the tenant to pay rent when 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”.

The landlords provided undisputed evidence that the tenants failed to pay the outstanding rent in the amount of \$1,375.00. Therefore, I find that the landlords are entitled to \$1,375.00 in outstanding rent for this tenancy.

The landlords continue to hold the tenants’ security deposit of \$275.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants’ security deposit in partial satisfaction of the monetary claim.

As the landlords were successful in their application, I find that they are entitled to recover the filing fee for this application.

Conclusion

The landlords withdrew their application for an Order of Possession as the tenants had moved out.

The landlords’ application for compensation for damages is dismissed with leave to reapply.

I issue a \$1,200.00 Monetary Order in favour of the landlords, which allows the landlords to recover unpaid rent, the filing fee for this application, and also allows the landlords to retain the tenants' \$275.00 security deposit in partial satisfaction of the monetary claim. The tenants must be served with this Order as soon as possible. Should the tenants 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: September 13, 2017

Residential Tenancy Branch