



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 landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent (and damage) pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although the teleconference remained open until 10:46 am in order to enable the tenants to connect with this hearing scheduled for 9:30 am. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions with respect to the landlord's application. At the hearing, the landlord withdrew her application for an Order of Possession for Unpaid Rent as the tenants have vacated the rental unit.

The landlord testified that the tenants were each served with the landlord's Application for Dispute Resolution ("ADR") with Notice of Hearing on July 21, 2017 by registered mail. The landlord provided copies of the Canada Post receipts as well as tracking information to confirm the tenants were served with these materials and a second set of receipts to confirm that the tenants were served with the landlord's additional evidence package and amendment request by registered mailing on August 9, 2017 and September 14, 2017 respectively.

I find that the tenants were deemed served with the landlord's ADR on July 26, 2017 pursuant to section 89 and 90 of the Act. I find that the tenants were both deemed served with the landlord's evidence package on August 14, 2017 pursuant to the Act. I find that the tenants were both deemed served with the landlord's amendment request on September 19, 2017 in accordance with the Act. These 3 findings regarding registered mail service were made with consideration to the deeming provisions of Residential Tenancy Policy Guideline No. 12.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Unpaid Rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified that the tenancy began on April 1, 2017 as a 12 month fixed term tenancy that may continue as a month to month tenancy at the end of the fixed term. The rental amount of \$1400.00 was payable on the 1st of each month. The landlord testified that the tenants vacated the rental unit and that the tenants did not provide a security deposit at any point during this tenancy. The landlord sought a monetary amount of \$3545.00 from the tenant for unpaid rent and damage to the unit.

The landlord testified that she has not, as of the date of this hearing, re-rented the unit as she is taking on some renovation projects in the unit. She testified that many of those renovations are necessary as a result of the damage done by the tenants during the course of their tenancy. The landlord testified that the tenants agreed to pay \$200.00 for cleaning of the rental unit at the end of the tenancy. The landlord testified that the tenants also left items behind that she had to dispose of.

The landlord provided undisputed evidence that the tenants did not pay rent in accordance with their tenancy agreement. The landlord indicated that the tenants failed to pay rent in time and in full after the first month of their tenancy. She testified that she provided several reminders to the tenants with respect to rent and that she tried to accommodate a payment plan for the tenants. She testified that, eventually, she served the tenants with a notice to vacate the rental unit as a result of unpaid rent.

According to the undisputed testimony of the landlord, the tenants paid rent as follows;

- May 2017: \$1400.00 (entire rental amount unpaid)
- June 2017: \$700.00 (half of rental amount unpaid)
- July 2017: \$2800.00 (towards rental arrears & half of July rent)
- Aug 2017: \$1400.00

The landlord testified that, based on the tenants' move out dates and as of the date of this hearing, the tenants owe \$1400.00 in outstanding rent/arrears. However, the landlord had included an additional \$700.00 owed by the tenants for their security deposit. As the security deposit is not an amount "owed" to the landlord and is generally

refundable at the end of the tenancy, I find that the corrected amount owed by the tenants to the landlord is \$700.00. The landlord acknowledged that the tenants paid \$1400.00 rent in August 2017 however they paid the amount late and vacated sometime after the end of August 2017.

The landlord also stated that she sought to add a claim. The landlord submitted an amendment application for dispute resolution on August 9, 2017. However, the application for amendment did not clearly state and explain that the landlord sought a further monetary amount for damage to the unit. Therefore, based on all of the circumstances of this landlord's application and the time required to address her application at this hearing, I dismiss the landlord's application for a monetary order for damage to the unit with leave to reapply.

Analysis

The landlord provided testimony that the tenants agreed to pay \$200.00 for cleaning of the rental unit at the end of the tenancy. The landlord testified that the tenants also left items and left the unit in poor condition. The landlord did not provide any written agreement between the tenants and landlords regarding cleaning costs. I find that the landlord submitted insufficient evidence with respect to the cleaning costs and any agreement with the tenant. Therefore, I dismiss the landlord's application to recover cleaning costs with leave to reapply.

The landlord provided records with respect to rent payments as well as text and email conversation documents between the landlord and tenants. The landlord also provided undisputed clear testimony with respect to the tenants' incomplete and late payment of rent. Based on the testimony and evidence submitted by the landlord, I find that the landlord is entitled to a monetary order in the amount of \$700.00.

As the landlord was successful in her application, I find that the landlord is also entitled to recover the \$100.00 filing fee for this application.

Conclusion

The landlord's application for a monetary order relating to damage to the unit (including cleaning costs) is dismissed with leave to reapply.

The landlord's application for a monetary order relating to unpaid rent is granted. The landlord is entitled to a monetary order in the amount of \$800.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: October 3, 2017

Residential Tenancy Branch