



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MT CNR FF
Landlord: OPR MNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on November 6, 2017.

The tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy (the Notice);
- cancel the Notice for Unpaid rent or utilities; and,
- to recover the filing fee for the cost of this application.

The Landlord applied for the following relief:

- An order of possession for unpaid rent or utilities; and,
- A monetary order for unpaid rent or utilities.

Both Landlords were present at the hearing but were represented by their agent (the Agent), C.D. The Agent gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me. The Agent testified that she no longer requires an order of possession given that the Tenants have already vacated the rental unit and I have amended the Landlord's application to reflect this.

The Agent testified that the Landlords served the Tenants, in person, with the Application Package on August 21, 2017. I find the Tenants received this package on August 21, 2017, and were sufficiently served in accordance with the *Act*.

The Tenants did not appear at the hearing. As such, I dismiss the Tenants' application in its entirety, without leave to reapply. Further, in response to the Landlord's

application, the Tenant submitted 8 pages of documentary evidence, and 25 photos to the Residential Tenancy Branch. However, the Agent stated that this evidence was never served to them. As the Tenant was not present to confirm service of this evidence, I will not consider it further in this hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

Both parties provided a copy of the tenancy agreement, including the addendum. It confirms the tenancy began on May 1, 2017. The agreement specifies that rent in the amount of \$1,700.00 per month is due on the first day of each month. The Landlord holds a security deposit in the amount of \$850.00 but does not hold a pet deposit.

The addendum specifies that a \$150.00 charge is incurred if there is an extra person living in the unit (beyond the two people listed on the agreement).

The Agent provided a copy of the Notice. The Agent testified that the Tenants were both personally served the Notice on August 7, 2017, but they refused to sign the proof of service document. The Landlord testified that the amount listed on the Notice represented rent for the month of August 2017, as well as the “extra person” fees (as specified below).

The Agent testified that for the months of May, June, and July of 2017, there were three people living in the unit, but only two were listed on the tenancy agreement. The Agent testified this carries an extra charge of \$150.00 each month, as per the tenancy agreement. The Agent testified that although one of the Tenants, T.L., is not formally on the tenancy agreement, she has been living in the unit since the beginning. There was another individual, S.L, who lived in the unit for May-July of 2017, which accounts for the extra person charge for those 3 months.

The Agent further testified that the Tenants vacated the unit, without notice, on August 27, 2017, did not give a forwarding address, and left the unit in a state of disrepair, and

extremely dirty. The Agent testified that a new tenant moved in as of October 1, 2017, but they were unable to rent it for September, due to the manner the Tenants left, without proper notice, dirty, and damaged. Further, the Agent testified that the Tenants failed to pay rent for August or September of 2017. As such, the Agent stated that she is seeking a monetary order based on the following:

Date	Item	Amount Due	Amount Paid	Accrued Balance Owing
May 1, 2017	Extra Person Fee	\$150.00	\$0	\$150.00
June 1, 2017	Extra Person Fee	\$150.00	\$0	\$300.00
July 1, 2017	Extra Person Fee	\$150.00	\$0	\$450.00
August 1, 2017	Rent Due	\$1,700.00	\$0	\$2,150.00
September 1, 2017	Rent Due	\$1,700.00	\$0	\$3,850.00
Total Accrued Balance				\$3,850.00

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from the landlord's documentary evidence and testimony before me to demonstrate that the Tenants owe and have failed to pay \$1,700.00 in rent for August of 2017. Further, they owe 3 months' worth of "extra person" fees, as specified above (3x \$150.00). In consideration of this, I turn to the following portion of the *Act*:

Requirements for tenancy agreements

13 (2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

[.....]

(f) the agreed terms in respect of the following:

(iv) the amount of rent payable for a specified period,
and, **if the rent varies with the number of occupants,
the amount by which it varies;**

[my emphasis added]

I find the tenancy agreement, including the addendum, demonstrates that an extra \$150.00 per month was payable to the Landlord for the months there were 3 tenants (May, June, and July of 2017), and is allowable under the Act. The Agent stated that since the Tenants left the rental unit in disrepair when they left on August 27, 2017, they were unable to re-rent it until October 1, 2017. Considering all this, I find the Landlords are also entitled to compensation for the month of September 2017.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was successful in this hearing, I order the tenants to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Compensation as specified above (August rent, extra person fees, and September rent compensation):	\$3,850.00
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$850.00)
TOTAL:	\$3,100.00

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$3,100.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: November 06, 2017

Residential Tenancy Branch