



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, LAT, LRE, OLC
 OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), recovery of the filing fee, and an Order suspending or setting conditions on the Landlord’s right to enter the rental unit, authorizing the Tenants to change the locks, and requiring the Landlord to comply with the Act, regulation, or tenancy agreement.

This hearing also dealt with a cross-application filed by the Landlord under the Act seeking an Order of Possession, a Monetary Order for unpaid rent and the recovery of the filing fee.

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Landlord and the Agent for the Landlord (the “Agent”), both of whom provided affirmed testimony. The Tenants did not attend. As the Landlord was present and prepared to proceed, the hearing proceeded based on the Landlord’s Application. The Landlord and Agent were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondents must be served with a copy of the Application and Notice of Hearing. As the Tenants did not attend the hearing, I confirmed service of these documents as outlined below.

The Landlord and Agent testified that the Application and the Notice of Hearing were sent to the Tenants by registered mail on November 26, 2017. The Agent testified that they received proof from the mail delivery service provider that the items were attempted to be delivered to the Tenants on November 28, 2017, that the items were not accepted by the Tenants and that they were subsequently returned to sender. Section 90 of the Act states that a document given or served in accordance with section 88 or section 89 of the Act, unless earlier received, is deemed to be received on the fifth (5th) day after it is mailed.

I accept the Agent's undisputed testimony regarding the service of the Application and the Notice of Hearing on the Tenants as outlined above and based on this testimony, I find that the Tenants were attempting to avoid service. Despite the above noted deeming provisions, I therefore find that Tenants were served with the Application and the Notice of Hearing on November 28, 2017, the date the Tenants refused to accept these items by registered mail.

In any event, as the Landlord's Application was scheduled to be heard at the same time as the Tenants' Application, and the Tenants did not contact the Branch to cancel or withdraw their Application prior to the hearing time, I find that the Tenants' were aware of the date and time of the hearing and therefore could have attended the hearing to dispute the testimony provided by the Agent and the Landlord, should they have wished to do so. However, the Tenants did not attend the hearing to present any evidence or testimony in relation to either their Application or the Landlord's Application.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Landlord, copies of the decision and any applicable Orders will be e-mailed to both the Landlord and the Agent at the e-mail addresses provided in the hearing.

Preliminary Matters

At the outset of the hearing the Agent and Landlord testified that the Tenants vacated the rental property on November 30, 2017, and withdrew their Application for an Order of Possession.

The Landlord and Agent also requested to amend the Application to include retention of the security deposit paid by the Tenants to offset the cost of the filing fee and the outstanding rent owed. Section 72 of the *Act* states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted, in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. The Rules of Procedure also state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated and where it is reasonable under the circumstances to do so. As a result, the Application was amended to include the retention of the security deposit paid by the Tenants to offset any money owed by the Tenants to the Landlord pursuant to the *Act* and the Rules of Procedure.

Issue(s) to be Decided

Is there a valid reason to cancel a 10 Day Notice under the Act?

Are the Tenants entitled to recover the filing fee pursuant to section 72 of the Act?

Are the Tenants entitled to an Order suspending or setting conditions on the Landlord's right to enter the rental unit, authorizing the Tenants to change the locks, and requiring the Landlord to comply with the *Act*, regulation, or tenancy agreement?

Is the Landlord entitled to a Monetary Order for unpaid rent and the recovery of the filing fee and to retain the security deposit paid by the Tenants pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the tenancy commenced on May 1, 2017, and that rent in the amount of \$2,150.00 is due on the first day of each month. The tenancy agreement also indicates that a security deposit in the amount of \$1,075.00 was paid which the Landlord testified they still hold. The Landlord testified that on September 1, 2017, they entered into a new tenancy agreement with the Tenants at a monthly rent amount of \$2,210.00, which is due on the first day of each month. In support of this testimony the Landlord provided a copy of the new tenancy agreement in the documentary evidence before me.

The Landlord testified that the Tenants moved out November 30, 2017, and that as of the date of the hearing, they owe \$2,210.00 in rent for November, 2017. The Tenants did not appear at the hearing to present any evidence.

Analysis

As the Tenants failed to attend the hearing to present any evidence or testimony in support of their Application, their Application is dismissed without leave to reapply.

Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to End Tenancy that is compliant with section 52 of the *Act*. However, as the Landlord indicated in the hearing that an Order of Possession is not required, I have not considered if the Landlord is entitled to one.

I accept the Landlord's undisputed testimony that as of the date the Tenants vacated the rental unit, rent in the amount of \$2,210.00 remained unpaid. Pursuant to section 72 of the *Act*, I find that the Landlord is also entitled to \$100.00 for the recovery of the filing fee and to retain the security deposit paid by the Tenants, in full, as partial recovery of the outstanding rent. As a result of the foregoing, I find that the Landlord is entitled to a Monetary Order in the amount of \$1,235.00.

Conclusion

The Tenants' Application is dismissed in its entirety without leave to reapply.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,235.00. The Landlord is provided with this Order in the above terms and 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: January 19, 2018

Residential Tenancy Branch