



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords – OPRM-DR, FFL

Tenants – CNR, RP, OLC, FFT

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* (“*Act*”).

The landlords sought:

- an Order of Possession for unpaid rent pursuant to sections 46 and 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 tenants sought:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord’s agent (the landlord) and the tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Tenant J.L. (the tenant) indicated that they would be the primary speaker for the tenants.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord testified that the Landlord’s Application for Dispute Resolution (the Landlord’s Application) and an evidentiary package was served to each tenant by way of registered mail on January 12, 2018. The tenant confirmed that they received the

Landlord's Application and evidentiary package. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with the Landlord's Application and an evidentiary package.

The landlord testified that they did not receive the Tenant's Application for Dispute Resolution (the Tenant's Application) or any evidence. The tenant confirmed they did not serve the Tenant's Application or their evidence to the landlord.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that the tenants did not serve the landlord with their evidence and that the landlord may be prejudiced by this as they did not have a chance to respond to the tenant's evidence. For this reason the tenants' evidence is not accepted for consideration.

At the outset of the hearing the tenant and the landlord confirmed that the tenants had vacated the rental unit on January 31, 2018.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recover the filing fee for the landlords' application from the tenants?

Are the tenants entitled to any of the remedies that they are seeking under the *Act*?

Background and Evidence

Written evidence was provided that this tenancy began on February 01, 2017, with a monthly rent of \$4,800.00, due on the first day of the month. The landlord testified that they continue to retain a security deposit in the amount of \$4,800.00. The landlord submitted that there were no pets in the rental unit.

The landlord also provided in written evidence:

- a copy of a Direct Request Worksheet in which the landlords indicate that they are seeking a total of \$4,800.00 for unpaid rent in January 2018; and
- a copy of a statement from the landlord in which they indicate that they have not received the Tenant's Application or evidence;

The landlord testified that the tenants owe \$4,800.00 in unpaid rent for January 2018. The landlord confirmed that they received a deposit for the furniture in the rental unit in the amount of \$2,400.00. The landlord stated that they are not seeking to retain the security deposit and are seeking a Monetary Order for the unpaid rent owing by the tenants. The landlord requested to serve the Monetary Order to the tenant by way of e-mail as they do not have the tenants' address.

The tenant confirmed that they did not pay the monthly rent and were seeking to have the security deposit applied to the outstanding amount of unpaid rent owing to the landlord.

Analysis

As the landlords and the tenant agreed that the tenants have moved out of the rental unit as of January 31, 2018, I dismiss the Tenant's Application to cancel the 10 Day Notice, without leave to reapply. As this tenancy has ended I find that the rest of the tenants' claims are no longer applicable and I dismiss them without leave to reapply. As the tenant has not been successful in their Tenant's Application, I dismiss their request to recover the filing fee, without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a notice to end tenancy, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*. The landlord testified that the tenant has vacated the rental unit and they do not require an Order of Possession.

Section 26 of the *Act* requires a tenant to pay rent to the landlords, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

I find the tenant confirmed that they did not pay the monthly rent for January 2018 in their testimony and provided no evidence or testimony that they had legal authority under the *Act* to withhold the monthly rent.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Based on the written evidence, affirmed testimony and the above, I find that the landlord is entitled to a monetary award of \$4,800.00 against the tenants, for unpaid rent owing for this tenancy for January 2018.

Section 19 (1) of the *Act* stipulates that a landlord must not require or accept a security deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement.

As the landlord accepted \$4,800.00 as a security deposit, which is more than the equivalent of $\frac{1}{2}$ a half month's rent, I find the landlord accepted a security deposit that is greater than the amount permitted under section 19 of the *Act*.

Section 19 (2) of the *Act* states that if a landlord accepts a security deposit that is greater than the amount permitted under section 19 (1) of the *Act*, the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Pursuant to section 19 of the *Act*, I find the tenant is entitled to deduct the \$2,400.00 overpayment of the security deposit from rent owing to the landlord.

Pursuant to section 72 (2) (b) of the *Act*, I allow the landlord to retain the tenant's overpayment of their security deposit in the amount of \$2,400.00 in partial satisfaction of the landlord's monetary award. The security deposit is now reduced to \$2,400.00.

As the landlord has been successful in their application, I allow them to recover their filing fee from the tenants.

Although the landlord requested to serve the Monetary Order to the tenant's e-mail address, I find that the landlord has not made any attempts to serve the tenant in accordance with section 89 of the *Act*. Should the landlord not be successful in serving the tenant in accordance with the section 89 of the *Act*, they are at liberty to file an Application for Substituted Service.

Conclusion

The Tenant's Application is dismissed in its's entirety, without leave to reapply.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and to recover the filing fee:

Item	Amount
Unpaid January 2018 Rent	\$4,800.00
Less Overpayment of Security Deposit	-2,400.00
Filing Fee for this application	100.00
Total Monetary Order	\$2,500.00

The landlord is provided with this Order in the above terms and 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 Orders 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 26, 2018

Residential Tenancy Branch