



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL
 CNR, RR, RP, LRE

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), a rent reduction, an order suspending or setting conditions on the Landlord’s right to enter the rental unit, and an order for the Landlord to complete repairs.

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

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. As the Agent was present and prepared to proceed, the hearing proceeded based on the Landlord’s Application. The Agent was 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 respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as outlined below.

The Agent testified that the Application and the Notice of Hearing were sent to the Tenant at the dispute address by registered mail on February 2, 2018. The Agent acknowledged that the Tenant vacated the rental unit on February 7, 2018, five days after the registered mail was sent, but stated that the Tenant left in the afternoon and therefore had sufficient time to receive the registered mail. Further to this, the Agent testified that copies of the registered mail delivery notice were found in the Tenant’s mail box after he vacated the rental unit, therefore the Tenant had sufficient notice that

registered mail was available for pick-up. Section 90 of the Act states that documents sent by registered mail are deemed received five days after they are sent, unless earlier received. Based on the testimony before me, I am satisfied that the Tenant had sufficient notice that registered mail was available for pick-up prior to vacating the rental unit and that he had time to retrieve it on February 7, 2018, prior to vacating the rental unit on that date. As a result, I find that the Tenant was deemed served the Application and Notice of Hearing on February 7, 2018, five days after they were sent to the rental unit by registered mail. In any event, I find that the Tenant was aware of the date and time of the hearing as their Application in relation to the 10 Day Notice was scheduled to be heard at the same time.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision. At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be e-mailed to the Agent at the e-mail address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing the Agent testified that the Tenant vacated the rental unit on the afternoon of February 7, 2018, and therefore requested to withdrawn their Application seeking an Order of Possession. The Application for an Order of Possession was withdrawn accordingly.

Preliminary Matter #2

In addition to the Application, the Agent filed an Amendment to an Application for Dispute Resolution (the "Amendment") on February 27, 2018, increasing the Landlord's monetary claim to \$10,100.00 for outstanding rent, in addition to damage to the rental unit and outstanding fines and fees. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Both the Tenant and the Landlord filed their original Applications in relation to the 10 Day Notice and they were given a priority hearing date specifically to deal with matters arising from the 10 Day Notice. As a result I find that the priority claim relates to the 10 Day Notice and the payment of rent. Further to this, as the Tenant vacated the

rental unit on February 7, 2018, and the Agent advised me that he was not provided with a forwarding address, I am not satisfied that the Tenant was served with a copy of the Amendment in accordance with the *Act* and the Rules of Procedure. As a result, I exercise my discretion to dismiss the Landlords Amendment seeking compensation for damage to the rental unit and recovery of unpaid fines and fees with leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for rent and recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

The Agent testified that the six month fixed-term tenancy began on June 1, 2017, and that rent in the amount of \$1,850.00 was due on the first day of each month.

The Landlord testified that the Tenant moved out of the rental unit with no advance notice on February 7, 2018, and that as of the date of the hearing, the Tenant owed \$3,700.00 in outstanding rent for December, 2017, and February 2018. The Landlord stated that due to the service of a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), the Tenant was advised that no rent was due for January 2018. Further to this the Landlord sought \$1,000.00 for loss of rent for March 2018, as he stated he would not have been able to clean and repair the rental unit and find a suitable Tenant for March 1, 2018. However, the Agent acknowledged that no cleaning or repairs of the rental unit have been completed and that no new Tenant has been sought.

The Tenant did not appear in the hearing to provide any testimony or evidence in relation to either their Application or the Application of the Landlord.

Analysis

I accept the Agent's undisputed testimony that as of the date the Tenant vacated the rental unit, rent in the amount of \$3,700.00 remained unpaid.

Although the Agent also sought \$1,000.00 for loss of rent for March 2018, the Agent acknowledged that as of the date of the hearing, no effort has been made to repair or re-rent the rental unit. Further to this, I find the Agent's testimony that a Two Month Notice was served on the Tenant in November 2017, inconsistent with his testimony

that the unit could not be re-rented for March 1, 2018, and therefore the Landlord is entitled to compensation for loss of rent. As a result, I dismiss the Landlord's claim for loss of rent for March 2018, without leave to reapply.

Based on the above, and pursuant to sections 67 and 72 of the *Act*, the Landlord is therefore entitled to a Monetary Order in the amount of \$3,800.00 for outstanding rent and recovery of the filing fee.

Conclusion

The Landlord's claim for loss of rent for March 2018, and the Tenant's Application seeking cancellation of a 10 Day Notice, a rent reduction, an order suspending or setting conditions on the Landlord's right to enter the rental unit, and an order for the Landlord to complete repairs are dismissed without leave to reapply

The Landlord's Amendment seeking compensation for damage to the rental unit and recovery of unpaid fines and fees is dismissed with leave to reapply.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$3,800.00. 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: March 19, 2018

Residential Tenancy Branch