



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNRL FFL

Introduction

This hearing dealt with the landlords' 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 pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:44 a.m. in order to enable the tenant/respondent to connect with this teleconference hearing scheduled for 9:30 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlords testified that the tenant was served with a 10 Day Notice to End Tenancy ("10 Day Notice") on January 19, 2018 by posting the notice on the tenant's door. I find that the tenant was duly served with the 10 Day Notice (supplied as evidence for this hearing) on January 22, 2018. Landlord NK testified that, on February 3, 2018, the tenant vacated the rental unit. As the tenant no longer resides in the rental unit, the landlords withdrew the application for an Order of Possession.

The landlords testified that the tenant was served by registered mail with a copy of their Application for Dispute Resolution hearing package ("ADR"). The landlords provided a Canada Post mailing receipt, tracking number and details of tracking information to prove that the tenant signed for the ADR on February 7, 2018. I find that the tenant was deemed served in accordance with section 89 and 90 of the Act with the landlords' ADR package providing notice of this hearing.

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 from the tenant?

Background and Evidence

The landlords did not submit a written tenancy agreement as evidence for this hearing: Landlord NK testified that there was no written tenancy agreement between the parties. The landlords both testified that the tenancy began sometime in 2015 with a monthly rental amount of \$1200.00 payable on the 1st of each month. The landlords continue to hold the \$600.00 security deposit paid by the tenant at the outset of the tenancy.

Landlord NK testified that the tenant did not pay rent of \$1200.00 due on January 1, 2018. On January 19, 2018, the landlords issued a Notice to End Tenancy for unpaid rent for the month of January 2018. The landlords submitted text correspondence with the tenant to show that she was aware of the rental arrears, that she received the landlords' 10 Day Notice and that she did not pay the outstanding rental amount owed. Within the text messages, the tenant also confirmed that she received the landlord's Application for Dispute Resolution including notice of this hearing.

Landlord NK testified that the tenant vacated the rental unit on February 3, 2018. Landlord NK testified that the tenant did not pay any money towards February 2018 rent. Landlord NK testified that, while the tenant was in contact with the landlords via text correspondence after she vacated the rental unit, she did not provide a forwarding address to the landlords or agree to any repayment of the rent. The landlords testified that, as of the date of this hearing, the tenant has not paid the rental arrears for January 2018. The landlords testified that, as of the date of this hearing, the tenant has not paid any amount towards February 2018 rent although the tenant continued to reside in the rental unit at the start of February 2018.

Landlord NK testified that, as soon as the tenant vacated the rental unit, the landlords advertised the rental unit by posting an advertisement online and by holding open houses to prospective tenants once the rental unit was cleaned. Landlord NK testified that the landlords held at least 2 open houses during the month of February 2018. Landlord NK also testified that the tenant had left the rental unit without cleaning or advising the landlords of repairs required to the rental unit. Landlord NK testified that none of the prospective tenants were able to move in prior to March 1, 2018 and that the open house showings of the unit were delayed slightly because of the need to clean

up the rental unit. She testified that the landlords were able to re-rent the unit for March 1, 2018.

The landlord applied for a monetary award of \$2572.38 however at the hearing it was determined that, with respect to this particular application for a monetary order for unpaid rent, the landlords sought \$2400.00 for two months of unpaid rent.

Analysis

The tenant failed to pay the January 2018 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant did not make an application to cancel the Notice and eventually vacated the rental unit. Although the tenant was sufficiently served with the landlords' Application for Dispute Resolution, the tenant did not attend this hearing. Based on the undisputed evidence before me, the tenant vacated the rental unit on February 3, 2018. I accept the landlords' undisputed testimony that the tenant did not pay the \$1200.00 rent for January 2018. Therefore, the landlords are entitled to recover \$1200.00 in unpaid rent for January 2018 from the tenant.

Based on the findings below, that the landlord is also entitled to recover unpaid rent for February 2018 from the tenant. I find that the tenant continued to reside in the rental unit until February 3, 2018 thereby preventing the landlords from renting the unit for the entire month of February 2018. I find that the tenant did not provide sufficient notice to the landlords that she would vacate the rental unit after the issuance of the 10 Day Notice thereby preventing the landlords from renting the unit in February 2018 after the tenant vacated the unit. I accept the testimony of Landlord NK that the tenant did not leave the rental unit in a neat and tidy condition thereby requiring the landlords to clean and make repairs before they were able to show the rental unit to prospective tenants.

I find that the landlords attempted to mitigate their loss (in rental income for February 2018) as a result of the tenant vacating the rental unit without sufficient notice. I accept the undisputed testimony of the landlords that they advertised online and made significant efforts, including holding more than one open house, to re-rent the unit before the end of February 2018. Therefore, I find that the landlords are entitled to recover the rental amount for February 2018: \$1200.00.

Landlord NK testified that the landlords continue to hold the \$600.00 security deposit of paid by the tenant at the outset of the tenancy. I will allow the landlords to retain the \$600.00 security deposit *plus any interest* in partial satisfaction of the \$2400.00 monetary award for unpaid rent. There is no interest payable for this period.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order to the landlords as follows,

Item	Amount
Unpaid Rent – January 2018	\$1200.00
Unpaid Rent – February 2018	1200.00
Less Security Deposit	-600.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order to Landlords	\$1900.00

The landlords are provided with this monetary 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 29, 2018

Residential Tenancy Branch