



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL CNR ERP FFT FFL MNRL OPL OPR

Introduction

This hearing dealt with applications by both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The tenant applied for:

- cancellation of a 2 Month Notice to End Tenancy for Landlord’s Use (the “2 Month Notice”) pursuant to section 49;
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46;
- an order that the landlord perform emergency repairs pursuant to section 33; and
- authorization to recover the filing fee for the application from the landlord pursuant to section 72.

The landlords applied for:

- an order of possession for unpaid rent pursuant to section 55;
- an order of possession for landlord's use pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for the application from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 20 minutes. The landlord SA (the “landlord”) attended, confirmed she represented both landlords and was given a full opportunity to be heard, present sworn testimony and make submissions.

At the outset of the hearing the landlord said that the tenant has vacated the rental unit and withdrew the portions of the application seeking an order of possession.

The landlord testified that they served their application for dispute resolution on the tenant by registered mail sent on February 13, 2018. The landlord provided a Canada Post tracking number as evidence of service. I find that the tenant was deemed served with the landlord's application and evidence in accordance with sections 88, 89 and 90 of the *Act* on February 18, 2018, five days after mailing.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord provided the following undisputed facts. This tenancy began in 2014. The monthly rent at the end of the tenancy was \$1,700.00. A security deposit of \$800.00 was paid at the start of the tenancy and is still held by the landlord.

On February 2, 2018 the landlord issued both a 10 Day Notice and a 2 Month Notice. At the time the 10 Day Notice was issued the landlord said the rental arrear was \$1,700.00. The landlord said that the tenant has not paid rent for February and March, 2018. The landlord said the rental arrears for this tenancy is \$3,400.00 as at the date of the hearing.

The landlord said that they also incurred \$10.00 for registered mail service of the present application on the tenant.

Analysis

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to reapply.

Therefore, as the tenant did not attend the hearing to pursue their application, I dismiss the tenant's application in its entirety without leave to reapply.

I accept the landlord's undisputed evidence that the tenant failed to pay rent for the months of February and March, 2018 in the amount of \$1,700.00. A 2 Month Notice was issued to the tenant on February 2, 2018 pursuant to section 49 of the *Act*. Section 51 provides that a tenant who receives a notice under section 49 is entitled to receive compensation from the landlord that is the equivalent of one month's rent and that a tenant may withhold that amount from last month's rent.

Therefore, I find that the tenant was not obligated to pay rent for March, 2018. I find that the total arrear for this tenancy consists solely of the unpaid rent for February, 2018 in the amount of \$1,700.00. Accordingly, I issue a monetary award in the landlord's favour in that amount.

As the landlord's application was successful, the landlords are also entitled to recovery of the \$100.00 filing fee for the cost of this application.

As the cost of service of documents on a respondent is not a monetary loss recoverable under the *Act*, I decline to issue an order for the \$10.00 claimed by the landlords.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$800.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The tenant's application is dismissed without leave to reapply.

The portions of the landlords' application seeking an order of possession are withdrawn.

I issue a monetary order in the landlords' favour in the amount of \$1,000.00 in the following terms:

Item	Amount
Unpaid Rent February, 2018	\$1,700.00
Filing Fees	\$100.00
Less Security Deposit	-\$800.00
Total Monetary Order	\$1,000.00

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