



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDCL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order in the amount of \$1,800.00 for money owed or damage or loss under the Act, regulation, or tenancy agreement, an Order of Possession, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord and the witness for the Landlord (the “witness”), both of whom provided affirmed testimony. The Tenants did not attend. The Landlord and the Witness 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 explained below.

The Landlord testified that the Application, the Notice of Hearing, and the evidence before me was sent to each of the Tenants individually by registered mail on February 2, 2018, and provided me with the registered mail tracking numbers. The Landlord testified that the registered mail was never returned to her and that the mail delivery notices were in the Tenants mailbox on the morning of February 14, 2018, and gone later that afternoon. With consent of the Landlord I logged onto the mail service provider’s website and verified that the two packages were sent on February 2, 2018, and signed for by each of the Tenants on February 13, 2018. As there is no evidence before me that the Tenants received the above noted documents at an earlier date, pursuant to section 90 of the Act, I find that the Tenants’ were deemed served with the Application, the Notice of Hearing, and the evidence before me on February 7, 2018, five days after they were sent by registered mail. In any event, I find that the evidence before me also establishes that despite the deeming provisions of the Act, the Tenants

picked up the registered mail and signed for it on February 13, 2018, well in advance of the hearing.

Further to this, the Landlord and the Witness testified that the Tenants texted the Landlord during the hearing to request the hearing codes. Despite the fact that the Landlord provided this information to the Tenants via text message in the hearing, the Tenants still did not appear.

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 Landlord, copies of the decision and any orders issued in her favour will be e-mailed to her at the e-mail address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

The Landlord testified in the hearing that the Tenants were last seen on the property approximately January 22, 2018, and that with the help of the RCMP, she took possession of the rental unit under the abandonment provisions of the *Act* on approximately February 13, 2018. As a result, the Landlord withdrew her Application for an Order of Possession.

Preliminary Matter #2

On February 27, 2018, the Landlord filed an Amendment to an Application for Dispute Resolution (the "Amendment") increasing her monetary claim from \$1,800.00 to \$2,804.35. The Landlord testified that she posted the Amendment to the door of the rental unit on February 27, 2018, however, according to the Landlord's own testimony, the Tenant's no longer resided in or held possession of the rental unit at that time. The Landlord testified that the Tenants did not provide a forwarding address and as a result, she did not know how else to serve them. The Landlord also stated that she sent the Tenants an e-mail advising them of the total amount of her monetary claim but acknowledged that she did not e-mail them a copy of the Amendment.

The ability to know the case against you and provide evidence in your defence is fundamental to the dispute resolution process. As the Tenants were not served with a

copy of the Amendment, I find that it would be prejudicial to the Respondents and a breach of both the principles of natural justice and the Rules of Procedure to accept the Amendment for consideration. As a result, I dismiss the Amendment with leave to reapply. The hearing therefore proceeded on the original monetary claim for \$1,800.00 and recovery of the filing fee.

Preliminary Matter #3

During the hearing the Landlord also sought an order for substituted service as she stated that if she obtains a Monetary Order, she will not be able to serve the Tenants in a manner required by the *Act* as they failed to provide a forwarding address. The Landlord and the Witness testified that the Tenant D.Z. has a post office box which she uses regularly and provided me with that address. The Landlord also stated that she has regularly corresponded with the Tenants by e-mail and provided me with that e-mail address. I advised the Landlord that I would consider her request for substituted service and provided her with 48 hours to submit documentary evidence in support of this request. No documentary evidence was received from the Landlord in relation to her request for substituted service and records at the Residential Tenancy Branch (the "Branch") indicate that the Landlord contacted the Branch by telephone on March 5, 2018, to withdraw her claim for substituted service.

As a result of the above I accept the Landlords request to withdraw her claim for substituted service and she remains at liberty to reapply.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order pursuant to section 67 of the *Act*?

Is the Landlord entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The Landlord testified that the Tenants rented a self-contained portion of a single family home and that there was a verbal tenancy agreement in place for the Tenants to pay rent in the amount of \$900.00 on the first day of each month.

The Landlord testified that the Tenants were served with a One Month Notice to End Tenancy for Cause (the "One Month Notice") on December 28, 2017, which they did not dispute. The Landlord stated that the Tenants paid January 2018 rent as required but

currently owe \$900.00 in rent for February 2018. The Landlord stated that she is also seeking \$900.00 in lost rent for March 2018, as the Tenants failed to move out in a timely manner and caused significant damage to the rental unit. The Landlord testified that the Tenants put a large hole in one wall, and intentionally damaged the rental unit by pouring pasta sauce into heating vents, smashing eggs against the walls, pouring dirty water down the staircase, and smashing exterior lights. In support of her testimony the Landlord provided photographic evidence of the damage. As a result of the damage to the rental unit, the Tenant's failure to move-out as required on, and the Tenants failure to notify the Landlord of their eventual abandonment of the property, the Landlord stated that she was unable to re-rent the unit for March 2018. As a result, she is seeking \$900.00 in lost rent of March 2018.

The Tenants did not appear at the hearing to provide any testimony or evidence for my consideration. They also did not submit any documentary evidence prior to the hearing.

Analysis

I accept the Landlord's undisputed testimony that as of the date of the hearing, rent in the amount of \$900.00 remained unpaid for February 2018. I also accept the Landlords testimony that due to the Tenant's actions, she was unable to re-rent the unit for March 2018 and therefore suffered a loss of \$900.00.

Pursuant to section 72 of the *Act*, I find the Landlord is entitled to the recovery of the \$100.00 filing fee.

Based on the above and pursuant to section 67 of the *Act* I therefore grant the Landlord a Monetary Order in the amount of \$1,900.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,900.00. 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: April 6, 2018

Residential Tenancy Branch