



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL OPRM-DR

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("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, pursuant to section 72 .

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing and evidence. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the landlord's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

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The landlord testified in the hearing that the tenant had moved out on February 28, 2018 and no longer required an Order of Possession. The landlord withdrew his application for an Order of Possession for Unpaid Rent.

Issues

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to recover their filing fee for this application?

Background and Evidence

This tenancy began on September 1, 2007, and ended on February 28, 2018. Both parties confirmed in the hearing that the landlord still holds the security deposit in the amount of \$450.00.

Both parties dispute what the currently month rent is set at, and when the rent is due. The landlord testified that the monthly rent was last revised in 2013, and set at \$850.00 per month, and payable in bi-weekly instalments. The tenant testified that the rent was set at \$825.00, reduced from \$850.00. The tenant submitted documentation, which the landlord acknowledged was his father's handwriting. The landlord testified that his father was in his 80s, and therefore was not present for the hearing. The document submitted by the tenant indicates that the rent was changed from \$850.00 to \$825.00 per month. The document contains calculations which show that \$2,800.00 is the rent outstanding for this tenancy up to February 2018. The tenant testified that this is the amount owing for this tenancy.

The landlord testified that the tenant owes rent from 2007 through to 2013, and submitted a spreadsheet of the rent payable for this tenancy. The landlord has taken over the management of this tenancy from his elderly father. The landlord is seeking \$9003.00 in outstanding rent for this tenancy.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Under the Act, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Although the tenant admits that she owes unpaid rent for this tenancy, I find that there is conflicting evidence as to what the outstanding rent for this tenancy is, as well as the monthly rental amount, and when it was due. The landlord admitted in the hearing that his father has had made changes to the agreement between both parties, and that his father's handwriting was on the documentation submitted for this hearing. The landlord's father did not attend the hearing to verify or dispute the tenant's testimony that she owed the amount written on the document.

As there is conflicting evidence and testimony as to what the outstanding rent was, and as the onus falls on the applicant to prove their loss, I am not satisfied that the landlord has demonstrated that the tenant owes \$9004.00 in outstanding rent. As the documentation indicates that the tenant owes \$2,800.00 in outstanding rent, which the tenant does not dispute, I find that the landlord is entitled to recover \$2,800.00 in outstanding rent for this tenancy.

The landlord continues to hold the tenant's security deposit of \$450.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application.

Conclusion

The landlord withdrew their application for an Order of Possession as the tenant had moved out.

I issue a \$2,450.00 Monetary Order in favour of the landlord, which allows the landlord to recover the unpaid rent, the filing fee for this application, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

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 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 23, 2018

Residential Tenancy Branch