



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC
 OPR, MNR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Tenants 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”) and an order for the Landlord to comply with the Act, regulation, or tenancy agreement.

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

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenants did not attend. As the Landlord was present and prepared to proceed, the hearing proceeded based on the Landlord's Application. The Landlord 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 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 outlined below.

The Landlord testified that on February 16, 2018, the Application and the Notice of Hearing were personally served on the Tenants G.L. and B.N., in the presence of a police officer. As a result, I find that the Tenants G.L. and B.N. were personally served with the Application and the Notice of Hearing on February 16, 2018. In any event, as

the hearing of the Tenants' Application was also scheduled for the same date and time as the Landlord's Application, I find that the Tenants were aware of the date and time of the hearing as part of their own Application.

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 favor will be mailed to her at the address listed in her Application.

Preliminary Matters

Preliminary Matter #1

The Application submitted by the Tenants lists four names, however, in the hearing the Landlord testified that she only served the G.L. and B.N. with a copy of the Application and the Notice of Hearing, as they are the tenants. The other names listed on the Application filed by the tenants appear to be their children, who are occupants of the rental unit but not tenants. As a result, I have amended the Application to name only the tenants G.L. and B.N. who will be collectively referred to in this decision as the "Tenants".

Preliminary Matter #2

In the hearing the Landlord testified that the Tenants continued to occupy the rental unit until March 14, 2018, but did not pay any rent for March. As a result, the Landlord requested to amend their Application to include loss of rent for March 2018. The Rules of Procedure state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application was made. As a result, I have amended the Landlord's Application to include outstanding rent for March 2018, in accordance with the *Act* and the Rules of Procedure.

Preliminary Matter #3

The Landlord withdrew their Application for an Order of Possession as they stated that the Tenants moved out of the rental unit on March 14, 2018. The Application was amended accordingly.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation for unpaid rent and recovery of the filing fee pursuant to section 67 of the *Act*?

Background and Evidence

The Landlord testified that the month-to-month tenancy began in April of 2016, that rent in the amount of \$1,500.00 is due on the first day of each month, and that a security deposit in the amount of \$750.00 was paid by the Tenants at the start of the tenancy, which she still holds. The Landlord testified that for the first two months of the tenancy, the Tenants paid rent on time but after that, they began making partial rent payments or no rent payments at all. The Landlord testified that she attempted many times to make payment arrangements with the Tenants but these arrangements were unsuccessful. As a result, the Landlord stated that she had no choice but to end the tenancy by serving a 10 Day Notice.

The 10 Day Notice in the documentary evidence before me, dated February 7, 2018, has an effective vacancy date of February 18, 2018, and indicates that as of February 1, 2018, the Tenants owed \$9,000.00 in outstanding rent. The Landlord testified that the 10 Day Notice was personally served on the Tenants on February 7, 2018, but they refused to sign the Proof of Service document. As a result, the Landlord stated that she returned to the rental unit the following day, February 8, 2018, and the 10 Day Notice was personally served on the Tenants by her again in the presence of a police officer.

The Landlord testified that the Tenants subsequently moved out March 14, 2018, and that as of the date of the hearing, they owe \$11,100.00 in outstanding rent.

Although the Tenants sought cancellation of the 10 Day Notice and applied for an Order for the Landlord to comply with the *Act*, regulation, or tenancy agreement, they did not appear at the hearing of their own Application to provide any evidence or testimony for my consideration.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenants were personally served

with the 10 Day Notice on February 7, 2018. In any event, I find that the tenants were also personally served on February 8, 2018.

As the Tenants failed to attend the hearing to present any evidence or testimony in support of their Application, their Application is dismissed in its entirety without leave to reapply.

I accept the Landlord's undisputed testimony that as of the date the Tenants vacated the rental unit, rent in the amount of \$11,100.00 remained unpaid. Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to recover the \$100.00 filing fee and to retain, in full, the \$750.00 security deposit paid by the tenants in partial satisfaction of the above noted debt.

Based on the above, and pursuant to section 67 of the *Act*, I find that the Landlord is therefore entitled to a Monetary Order in the amount of \$10,450.00; \$11,100.00 in outstanding rent, plus \$100.00 for the recovery of the filing fee, less the \$750.00 security deposit.

Conclusion

The Tenants' Application is dismissed in its entirety without leave to reapply.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$10,450.00. 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 25, 2018

Residential Tenancy Branch