



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: FFL OPRM-DR
 Tenants: CNR FFT OLC

Introduction

This hearing dealt with applications from both the landlords and the tenants pursuant to the *Residential Tenancy Act* (the *Act*).

The landlords applied for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) pursuant to section 46 of the *Act*;
- an order for the landlords to comply with the *Act* pursuant to section 62 of the *Act*; and
- recovery of the filing fee for this application from the landlords pursuant to section 72 of the *Act*.

The landlords L.B. and J.R. (herein referred to as "the landlords") appeared at the date and time set for the hearing of this matter and spoke on behalf of the landlords. The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:53 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I

also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

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.

Accordingly, in the absence of any evidence or submissions from the tenants who were applicants in one of the applications being heard at this hearing, I order the tenants' application dismissed without liberty to reapply.

I confirmed with the landlords that they had served the Notice of Dispute Resolution Proceeding for their application on both the tenants, individually. The landlords provided two separate Canada Post registered mail tracking numbers as proof of service. As such, I find that the tenants were served with notice of the landlords' application for dispute resolution in accordance with section 89 of the *Act*.

Preliminary Issue – Amendment of Landlord's Application

At the outset of the hearing, the landlords advised that the tenants had vacated the rental unit and that they no longer require an Order of Possession. The landlords further sought to amend their application to include unpaid rent for June 2018, as when they submitted their application on May 22, 2018, it was premature at that time for them to have requested June 2018 rent.

The landlords referred me to a previous Residential Tenancy Branch arbitration decision dated June 12, 2018 (file number noted on the cover sheet of this decision) in which the arbitrator found that the tenants had not paid rent for the months of April, May and June 2018 and the landlords were granted an Order of Possession. The tenants filed for a review of that decision. The review decision, issued on June 19, 2018, upheld the original arbitrator's June 12, 2018 decision to issue an Order of Possession. The landlords served the Order of Possession on the tenants; and the tenants vacated the rental unit on June 22, 2018.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's application to include unpaid rent in the amount of \$1,500.00 per month for the months of April, May and June 2018, since the tenants continued to reside in the rental unit and

can reasonably have anticipated that they would be held responsible for this rent payment.

Further, with the consent of the landlords, I amended the landlords' application to dismiss without leave to reapply their application for an Order of Possession as it is no longer required.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recover the filing fee for their application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The landlords stated that they could not find the written tenancy agreement but provided the following unchallenged testimony about the agreed upon terms of the tenancy agreement between the parties. The tenancy began on December 15, 2017 as a month to month tenancy, with monthly rent of \$1,300.00 due on the first of the month. The landlords stated that a security deposit of \$350.00 was paid by the tenants at the beginning of the tenancy and continues to be held by the landlords.

As explained in the Preliminary Issue section of this decision, the landlords referred to a previous Residential Tenancy Branch arbitration decision dated June 12, 2018, in which the arbitrator found that the tenants had not paid rent for the months of April, May and June 2018.

The landlords confirmed that their claim at this hearing is to obtain a monetary order for the amount of the rental arrears owing for the months of April, May and June 2018 totalling \$3,900.00 [\$1,300.00 x 3 months].

The landlords confirmed that they have not received any payments of rent from the tenants in relation to the above-noted three months of outstanding rent.

Analysis

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

Based on the unchallenged evidence and testimony presented by the landlords at the hearing, I find that they are entitled to a monetary award in the amount of \$3,900.00 for rental arrears owed by the tenants for the months of April, May and June 2018.

The landlords continue to retain the tenants' security deposit of \$350.00. No interest is payable on the deposit during the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order that the landlords retain the tenants' entire security deposit of \$350.00 in partial satisfaction of the monetary award, and I issue a Monetary Order in the landlords' favour for the remaining amount of the monetary award owing.

Further to this, as the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee from the tenants. A summary of the monetary award is provided as follows:

Item	Amount
Amount of unpaid rent owing to the landlords as a monetary award	\$3,900.00
Landlords to retain security deposit in partial satisfaction of monetary award	(350.00)
Remaining amount of unpaid rent owing to the landlord	= \$3,550.00
Recovery of filing fee for this Application	+ 100.00
Total Monetary Order in Favour of Landlord	\$3,650.00

Conclusion

I order the landlords to retain the \$350.00 security deposit for this tenancy in partial satisfaction of my finding that the landlords are entitled to a monetary award of \$3,900.00 for unpaid rent owing for the months of April, May and June 2018.

I issue a Monetary Order in the landlords' favour against the tenants in the amount of \$3,650.00 in satisfaction of the remaining amount owing in unpaid rent, and to recover the landlords' filing fee for this application.

The landlords are 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: July 23, 2018

Residential Tenancy Branch