



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This participatory hearing was convened after the issuance of a July 31, 2018, interim decision by an Adjudicator. The Adjudicator determined that the landlords' application could not be considered by way of the Residential Tenancy Branch's (RTB) direct request proceedings, as had been originally requested by the landlord. Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter.

The Adjudicator reconvened the landlords' application to a participatory hearing for the following:

- 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
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:12 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m.

Landlord C.M. (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord indicated that they were representing the interests of both landlords in this matter.

Rules 7.1 and 7.3 of the RTB Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord testified that they sent the tenant a copy of the notice of this adjourned hearing and two Amendments to an Application for Dispute Resolution (the Amendments) by registered mail on August 20, 2018. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the notice of this hearing and the Amendments on August 25, 2018, the fifth day after its registered mailing.

The landlord provided written evidence that the Application for Dispute Resolution (the Application), along with all supporting evidence, was served to the tenant by way of registered mail on July 27, 2018, as a part of the direct request proceeding package. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application and supporting evidence on August 01, 2018.

Preliminary Matters

At the outset of the hearing the landlord testified that the tenant vacated the rental unit on August 31, 2018, and that they now have possession of the rental unit. The landlord requested to withdraw their application for an Order of Possession. Pursuant to section 64 of the *Act*, the landlords' application for an Order of Possession is withdrawn.

The landlord testified that the tenant was renting a shop for \$900.00, which is a separate building from the basement suite that the tenant was living in. The landlord stated that the tenant was renting the shop, where the tenant did not reside, before they started to rent the basement suite, where they did reside. The landlord submitted that their monetary claim includes the rent for the shop in addition to rent for the basement suite that the tenant was living in.

Section 2 of the *Act* establishes that it only applies to tenancy agreements, rental units and other residential property. I find that the agreement for the rental of the shop is not a residential tenancy agreement as the tenant did not live in that unit and rented it separately from the basement suite. For this reason I find that this agreement for the shop is outside the jurisdiction of the *Act* and I do not have jurisdiction for any matters regarding the shop.

I will now consider the landlords' Application for unpaid rent owing for the basement suite

Issues(s) to be Decided

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

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

Background and Evidence

The landlord provided in evidence:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on October 2, 2014, indicating a monthly rent of \$900.00, due on the first day of each month for a tenancy commencing on October 1, 2014;
- A copy of a second residential tenancy agreement which was signed by the landlords and the tenant on January 1, 2018, indicating a monthly rent of \$1,500.00, due on the first day of each month for a tenancy commencing on January 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 14, 2018, for \$4,400.00 in unpaid rent;
- Written evidence that a 10 Day Notice was posted to the tenant's door at 11:00 pm on July 14, 2018;
- Copies of bank statements showing the tenant paying the monthly rent for May 2018 and June 2018 as well as some arrears for in May 2018; and
- Copies of the landlords' Amendments, one requesting unpaid rent for August 2018 and the other requesting unpaid rent for September 2018.

The landlord stated that the tenant was in arrears since before April 2018 and requested unpaid rent for the basement suite in the amount of \$3,600.00 which is owed from April 2018 to September 2018. The landlord confirmed that she had calculated the rent for the basement suite combined with the amount owing for the shop on the direct request and monetary order worksheets and did not submit a separate record of the amount owing for the basement suite only.

The landlord testified that the tenant has not paid any money towards the amount owing on the 10 Day Notice since it was issued to the tenant.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Section 7 (1) of the *Act* states that if a landlord or tenant does not comply with this *Act*, the regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 7 (2) of the *Act* states that a landlord who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, *Regulations* or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Policy Guideline # 3 establishes that in a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.

Having reviewed the evidence and affirmed testimony, I find that the 10 Day Notice was served to the tenant in July 2018 and that this tenancy ended on August 31, 2018, when the tenant vacated the basement suite. Although the landlord has incurred a loss of rent for September 2018, I find that this hearing was on September 20, 2018, and that the landlord's total loss of rent is yet to be determined. I find that the landlord is required to mitigate their loss for September 2018, pursuant to section 7(2) of the *Act*, and for this reason the landlord's claim for a loss of rent for September 2018 is dismissed, with leave to reapply.

In regards to the rent owing prior to July 2018 for the basement suite, I find that the landlord has not submitted a Monetary Order Worksheet or Direct Request Worksheet to clearly show the rent that has been paid and what is owed prior to July 2018. I find that the landlord has provided evidence that the monthly rent was paid for May 2018 and June 2018 and that there were some arrears paid in May 2018 but the worksheets do not reflect these payments and how they are applied to the total owing for the basement suite. For the above reasons, I dismiss the landlord's Application for rent owing for the basement suite prior to July 2018, with leave to reapply.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Based on the above, the undisputed written evidence

and affirmed testimony, I find that the landlord is entitled to a monetary award in the amount of \$1,200.00 for unpaid rent owing for this tenancy for July 2018 and August 2018.

As the landlord has been successful in this application, I also allow them to recover the \$100.00 filing fee from the tenant.

Conclusion

I grant a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent for the basement suite and to recover the filing fee for this application:

Item	Amount
Unpaid July 2018 Rent	\$600.00
Unpaid August 2018 Rent	600.00
Filing fee for this Application	100.00
Total Monetary Order	\$1,300.00

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: September 27, 2018

Residential Tenancy Branch