



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing 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.

The tenant did not attend the hearing, which lasted approximately 14 minutes. The landlord's two agents, landlord BT ("landlord") and "landlord SA," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's two agents confirmed that they had permission to speak on behalf of the landlord named in this application, as agents at this hearing.

Preliminary Issue - Previous Hearings and Service of Documents

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing ("original hearing"). A decision, dated September 13, 2018, ("original decision"), was issued by an Adjudicator for the direct request proceeding. The original decision was based on the landlord's paper application only, with no submissions made by the tenant. The original decision granted the landlord a two-day order of possession ("original order of possession") and a \$1,350.00 monetary order ("original monetary order") for August 2018 rent of \$1,250.00 and the \$100.00 application filing fee, against the tenant.

The tenant applied for a review of the direct request decision, alleging fraud. A new review hearing was granted by a different Arbitrator, pursuant to a review consideration decision, dated September 21, 2018 ("review decision"). As per the review decision, the

tenant was required to serve the landlord with a copy of the review decision and the notice of review hearing.

The landlord confirmed that the tenant did not serve her with any documents to attend this review hearing. She said that she received a copy of the notice of review hearing from the Residential Tenancy Branch (“RTB”) directly, not from the tenant. The tenant did not appear at this hearing to testify as to how the landlord was served with the above required documents.

Accordingly, I find that the landlord was not served with all of the required documents, as per section 89 of the *Act*. Although the landlord received the review consideration decision from the RTB directly, the landlord did not receive the tenant’s review consideration application and evidence, as required, to understand why this review hearing was ordered. The review consideration decision stated clearly that the above documents were required to be served by the tenant to the landlord.

Section 82(3) of the *Act* states:

Following the review, the director may confirm, vary or set aside the original decision or order.

Accordingly, I confirm the original decision, original order of possession and original monetary order, all dated September 13, 2018.

Preliminary Issue – Increasing Landlord’s Monetary Claim

The landlord requested an increase to the monetary order that was originally requested in the original hearing. She said that since August 2018 rent was awarded in the original decision, the tenant failed to pay September, October and November 2018 rent.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord’s application to increase the monetary claim to include September to November 2018 rent. The tenant is aware that rent is due on the first day of each month. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required her to vacate earlier for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay her rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord’s claim for increased rent, despite the fact that she did not attend this hearing. Therefore, I heard the landlord’s claim for unpaid rent below.

Preliminary Issue - Service of Landlord's Original Application and 10 Day Notice

The landlord testified that the tenant was served with the copy of the landlord's original application on September 7, 2018, by way of registered mail to the rental unit. The landlord provided a copy of the Canada Post receipt and tracking number to confirm this mailing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's original application on September 12, 2018, the fifth day after its registered mailing.

The landlord testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 22, 2018 ("10 Day Notice"), by way of registered mail on the same date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on August 27, 2018, five days after its registered mailing.

Issue to be Decided

Is the landlord entitled to an increased monetary award for unpaid rent?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on April 1, 2018. Monthly rent in the amount of \$1,250.00 was payable on the first day of each month. A security deposit was not paid by the tenant to the landlord.

The landlord indicated that a 10 Day Notice was issued to the tenant for failure to pay rent of \$1,250.00 to the landlord, due on August 1, 2018. The landlord testified that the tenant failed to pay rent for August 2018, as well as September and October 2018.

The landlord seeks \$1,250.00 for rent for September and October 2018. The landlord also seeks half a month's rent for November 2018 in the amount of \$625.00, indicating that the landlord would carry out the order of possession against the tenant.

Analysis

While I have turned my mind to the testimony of the landlord and the landlord's written evidence, not all details of the submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on August 1, 2018, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on September 6, 2018, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by September 6, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. The original order of possession has already been issued at the original hearing.

Section 26 of the *Act* requires the tenant to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent totalling \$3,125.00 from September 1 to November 15, 2018. This includes rent of \$1,250.00 for each of September and October 2018 and \$625.00 for November 2018. Although this hearing occurred on November 5, 2018, I find that rent was due on November 1, 2018. I find that the landlord would have been unable to rent the unit for November 1, 2018, as the tenant is still residing in the rental unit as of the date of this hearing.

The Adjudicator at the original hearing awarded the landlord \$1,250.00 for August 2018 rent in the original monetary order.

Therefore, this review hearing decision should be read together with the original decision. I issue a new monetary order in addition to the original monetary order of \$1,350.00. The landlord is entitled to a new monetary order of \$3,125.00 against the tenant, which includes rent from September 1 to November 15, 2018.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant. The original monetary order has already been issued at the original hearing, including the award for the filing fee.

I caution the tenant to review section 79(7) of the *Act*, which states that a party may only apply once for a review consideration:

(7) A party to a dispute resolution proceeding may make an application under this section only once in respect of the proceedings.

Conclusion

This review hearing decision should be read together with the original decision, dated September 13, 2018.

The original decision, original order of possession and original monetary order, all dated September 13, 2018, are confirmed.

I issue a new monetary order in the landlord's favour in the amount of \$3,125.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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: November 07, 2018

Residential Tenancy Branch