



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNRL-S OPR

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order of possession pursuant to sections 46 and 55;
- A monetary order for unpaid rent pursuant to section 67;
- Authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlord's agent PS attended the hearing ("the landlord") and provided affirmed testimony. The landlord was given the opportunity to make submissions as well as present oral and written evidence.

The tenants did not attend the hearing. I kept the teleconference line open from the time the hearing was scheduled for an additional ten minutes to allow the tenants the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenants had been provided.

The landlord testified the tenants were individually served with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on September 26, 2018. Under section 90 of the *Act*, the documents are deemed received by the tenant five days later, on October 1, 2018. The landlord provided the Canada Post tracking number in support of service which are referenced on the first page of the decision. Pursuant to sections 89 and 90, I find the tenants were served with the Notice of Hearing and Application for Dispute Resolution on October 1, 2018.

At the outset of the hearing, the landlord testified the tenants vacated the unit on or about October 26, 2018. He withdrew his request for an order of possession under sections 46 and 55.

The landlord also requested amendment of the application to include an increase in the monetary award for unpaid rent the month of October 2018

Rule 4 of the *Rules of Procedure* allow for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served. At the time the landlord brought the application, rent for the month of October 2018 was not yet due. The landlord testified the tenants did not pay rent for the month of October 2018.

Further to Rule 4, I find the tenants could reasonably have anticipated that the landlord would claim authorization to increase the monetary award to include additional rent for the month of October. I accordingly allow the landlord to amend the application. The landlord's application is therefore amended to change the monetary order requested from \$1,550.00 to \$2,650.00.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent pursuant to section 67;
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Background and Evidence

The landlord testified that the parties entered into a signed residential tenancy agreement for a 1-year fixed term commencing February 1, 2018 for monthly rent of \$1,100.00 payable on the first of the month.

The landlord submitted a copy of the residential tenancy agreement.

The landlord personally served both tenants with a 10 Day Notice for Unpaid Rent or Utilities ("Ten-Day Notice") on September 12, 2018 for \$1,550.00 in unpaid rent. The Ten-Day Notice provides the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of September 12, 2018, (corrected to September 22, 2018).

The landlord submitted a Monetary Worksheet showing the rent owing and paid during the relevant portion of this tenancy indicating rent was outstanding as stated above at

the time the Ten-Day Notice was served. The landlord provided uncontradicted evidence that the sum of \$2,650.00 is owing for rent and he requests a monetary order in this amount.

The landlord testified the tenants paid a security deposit of \$550.00 at the beginning of the tenancy which remains with the landlord. The tenants have not provided written authorization to the landlord to retain any portion of the security deposit. The landlord requests authorization to apply the security deposit to a monetary order for rent owing.

The landlord testified the tenants vacated the premises on or before October 26, 2018. Therefore, an order of possession is no longer required.

Analysis

I have reviewed all documentary evidence and testimony. I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*. I find the tenants were served with the Ten-Day Notice on September 12, 2018 in accordance with sections 88 and 90 of the *Act* and with the Notice of Hearing documents in accordance with section 89 and 90 of the *Act*.

I am satisfied the tenant has not paid the overdue rent or disputed the Ten-Day Notice within the five-day period following service. Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice (being the corrected date of September 22, 2018) requiring the tenant to vacate the rental unit by that date.

As the tenants do not continue to occupy the premises, the landlord does not require an order of possession pursuant to section 55 of the *Act*.

Based on the uncontradicted evidence of the landlord, I find the landlord is entitled to a monetary award pursuant to section 67 in the amount of \$2,650.00 for unpaid rent, as well as the \$100.00 filing fee paid by the landlord for this application for a total of **\$2,750.00.**

Pursuant to section 72, I find the landlord may apply the security deposit to the monetary order.

A summary of my finding follows:

ITEM	AMOUNT
Award to landlord for outstanding rent	\$2,650.00
Reimbursement of filing fee	\$100.00
Less security deposit	(\$550.00)
Monetary Order	\$2,200.00

Conclusion

I grant a monetary order to the landlord in the amount of **\$2,200.00** for this Application.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be 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 05, 2018

Residential Tenancy Branch