



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This review hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order pursuant to section 67; and
- authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 10 minutes. The telephone lines remained open throughout the duration of the hearing to allow the parties to call in. The landlord attended and was given a full opportunity to present affirmed testimony, make submissions, present evidence and call witnesses.

The landlord testified that they serve the 10 Day Notice to End Tenancy for Unpaid Rent dated September 5, 2018 (the "10 Day Notice") by posting on the rental unit door on that date. The landlord testified that they served the Notice of Direct Request Proceeding on each of the tenants by registered mail on September 14, 2018. The landlord testified that they were served with a copy of the Review Decision and Notice of Reconvened Hearing on or about October 5, 2018.

Issue(s) to be Decided

Should the September 25, 2018 decision and orders be affirmed or set aside?

Background and Evidence

The landlord gave undisputed evidence regarding the following facts. This periodic tenancy began on December 1, 2017. The monthly rent is \$1,100.00 due on the first day of each month. The landlord issued the 10 Day Notice dated September 5, 2018 and posted it on the rental unit door on that date. The tenants made full payment of \$1,100.00 on September 13, 2018. There is no current rental arrear.

Analysis

I find that the tenants were obligated to pay monthly rent in the amount of \$1,100.00, as established in the tenancy agreement. I accept the evidence before me that the tenants had a rental arrears in the amount of \$1,100.00, comprised of the balance of unpaid rent on September 5, 2018.

I accept the evidence that the landlord posted the 10 Day Notice on the rental unit door on September 5, 2018. Pursuant to section 90 of the *Act*, I find that the tenants are deemed to have received the 10 Day Notice on September 8, 2018, three days after posting.

Pursuant to section 46(4) of the *Act* the tenants had five days from that date to pay the rent owed in full. I accept the landlord's evidence that the tenants paid in full the amount of \$1,100.00 on September 13, 2018. I find therefore that the tenants have paid the outstanding rent on the final day allowable under the *Act*.

I accept the undisputed evidence of the landlord that there is no rental arrear as at the date of the hearing, November 19, 2018. I find that the landlord is not entitled to either an Order of Possession or monetary order.

I set aside the decision of September 25, 2018 and replace it with the following:

I find that the tenants have paid the full outstanding rent within the timeframe allowed under the *Act*. Therefore, the 10 Day Notice is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I find that there is no rental arrear owing and the landlord is not entitled to a monetary award.

As the landlord's application was unsuccessful the landlord is not entitled to recover the filing fee for their application.

Conclusion

The decision and orders of September 25, 2018 are set aside and cancelled.

The 10 Day Notice of September 5, 2018 is cancelled and of no further force or effect, this tenancy continues until ended in accordance with the *Act*.

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 19, 2018

Residential Tenancy Branch