



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for a Monetary Order for unpaid rent, and for the recovery of the filing fee paid for this application.

The application was initially filed under the Direct Request process but was adjourned to a participatory hearing to clarify the address of both parties.

The Landlord called into the hearing approximately 10 minutes after the hearing was scheduled to begin. The Tenant did not attend the teleconference hearing during the approximately 30 minutes that the phone line remained open.

The Landlord was affirmed to be truthful in his testimony and stated that he provided the original Notice of Direct Request documents and a copy of his evidence to the Tenant in person on October 16, 2018. The Landlord submitted a Proof of Service document dated October 16, 2018 which was signed by the Tenant as well as a witness. After the application was scheduled for a participatory hearing, the Landlord served the Tenant with the Notice of Dispute Resolution Proceeding package in person on October 26th or October 27th. I find that the Tenant was duly served in accordance with Sections 88 and 89 of the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

During the hearing, the Landlord confirmed that the Tenant had moved out and therefore the Landlord was no longer seeking an Order of Possession. The Application for Dispute Resolution was amended to remove the claim for an Order of Possession. This decision is regarding the Landlord's claim for unpaid rent, as well as the recovery of the filing fee.

The Landlord clarified that the Tenant resided in a separate suite in his home. As both addresses were stated as the same on the Application for Dispute Resolution, 'basement' was added to the dispute address.

The Landlord initially applied for compensation for unpaid rent for September 2018. However, during the hearing the Landlord stated that he was also seeking unpaid rent for October and November 2018. As the tenancy agreement confirms that rent was due on the first of each month, I find that the Tenant was aware that rent was owing for each month he continued to live there. As such, I do not find that it would unfairly prejudice the Tenant to amend the Landlord's application to include an additional two months of rent on the Landlord's monetary claim.

Amendments to the application were made pursuant to Section 64(3)(c) of the *Act*.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided undisputed testimony regarding the tenancy. He stated that the tenancy began on May 30, 2018 and the Tenant moved out on November 20, 2018. Monthly rent was \$1,050.00 and a security deposit of \$400.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the Landlord, other than the tenancy start date which the agreement states as May 28, 2018.

On September 25, 2018, the Landlord served the Tenant in person with the 10 Day Notice. The Landlord submitted the 10 Day Notice into evidence as well as a Proof of Service form signed by the Tenant and a witness.

The 10 Day Notice states that \$1,050.00 was not paid as due on September 1, 2018. The Landlord provided testimony that he received a partial payment of \$300.00 on September 10, 2018, leaving an amount of \$750.00 outstanding for September 2018. The Landlord stated that rent for October and November 2018 was not paid. The Landlord stated that he has not received any partial payments towards rent owing, other than the \$300.00 payment made by the Tenant on September 10, 2018.

Analysis

In accordance with Section 26(1) of the *Act*, a tenant must pay rent when it is due. By not doing so, I find that the Tenant was in breach of the *Act* and must compensate the Landlord for the loss. The Tenant was notified of the outstanding rent in September 2018 through service of a 10 Day Notice and I have no evidence before me that the Tenant applied to dispute the notice within the 5 days provided under Section 46(4) of the *Act*.

I accept the undisputed testimony of the Landlord that \$750.00 of rent remains outstanding for September 2018 and that no rent was paid for October or November 2018.

Therefore, pursuant to Section 67 of the *Act*, I find that the Tenant owes the Landlord \$2,850.00. As the Landlord is still in possession of the security deposit, he may retain the deposit towards the total amount owing.

As the Landlord was successful in his application, I also award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 67 of the *Act*.

The Landlord is awarded a Monetary Order in the amount outlined below:

Monetary Order Calculations

September 2018 rent	\$750.00
October 2018 rent	\$1,050.00
November 2018 rent	\$1,050.00
Recovery of filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$400.00)</i>
Total owing to Landlord	\$2,550.00

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$2,550.00** for rent owed for September, October and November 2018, as well as the recovery of the filing fee paid for the Application for Dispute Resolution. The Landlord is provided with this Order in the above terms and 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 30, 2018

Residential Tenancy Branch