



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S, OPC, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on October 24, 2018 (the "Application"). The Landlord applied for the following:

- For compensation for monetary loss or other money owed;
- To recover unpaid rent;
- To keep the security deposit;
- For an Order of Possession based on a One Month Notice to End Tenancy for Cause;
- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; and
- Reimbursement for the filing fee.

The Representative appeared at the hearing for the Landlord. The Representative appeared with the Property Manager, owner of the rental unit and the owner's son. Nobody appeared at the hearing for the Tenants.

The Representative advised at the outset that the Tenants no longer live at the rental unit. The Representative agreed the following issues were therefore moot points:

- The request for an Order of Possession based on a One Month Notice to End Tenancy for Cause; and
- The request for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Representative sought to add two additional claims to the Application, \$940.00 for damage to the rental unit upon move-out and two months of rent for loss of rent. It was

not clear in the Application that the Landlord was seeking these amounts. There is no Monetary Order Worksheet that includes these amounts. There was no amendment submitted adding these amounts to the Application.

I asked the Representative where in the Application it indicated the Landlord sought the \$940.00. The Representative pointed to a quote submitted as evidence on December 2, 2018, the day before the hearing. The Representative advised that this quote was not served on the Tenants. In the circumstances, I declined to address this issue. In my view, the Tenants would have had no notice that the Landlord was seeking this amount at the hearing and I find it would be unfair to allow the Landlord to proceed with this request. The Landlord is at liberty to re-apply for this compensation.

The Representative agreed that the Application did not indicate anywhere that the Landlord was seeking two months of rent for loss of rent. Further, the evidence relevant to this issue had not been served on the Tenants. In the circumstances, I declined to address this issue. In my view, the Tenants would have had no notice that the Landlord was seeking this amount at the hearing and I find it would be unfair to allow the Landlord to proceed with this request. The Landlord is at liberty to re-apply for this compensation.

I advised the Representative that the only issues I would consider were as follows:

- The request to recover unpaid rent;
- The request to keep the security deposit; and
- The request for reimbursement for the filing fee.

I note that the request for compensation for monetary loss or other money owed is a request for reimbursement for the filing fee in the Application. I have therefore not considered this as a separate issue from the request for reimbursement for the filing fee.

I explained the hearing process to the parties who did not have questions when asked. The Representative and Property Manager provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenants had not submitted evidence. I addressed service of the hearing package and Landlord's evidence.

The Representative testified that the hearing package and evidence were sent in one package addressed to both Tenants to the rental unit by registered mail on October 26, 2018. She provided Tracking Number 1 as noted on the front page of this decision. The Representative testified that the Tenants both lived at the rental unit at the time. She said the Tenants vacated the rental unit October 31, 2018. The Representative confirmed the package was returned to her.

With permission, I looked the Tracking Number up on the Canada Post website. The website shows a notice card was left indicating where and when to pick up the item on October 30, 2018. The website shows the item was unclaimed and returned to the sender.

I accept the undisputed testimony of the Representative in relation to service. Based on this, and the Canada Post website information, I find the Tenants were served with the hearing package and evidence in accordance with sections 59(3), 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "*Act*").

I note that it would have been preferable for the Landlord to send each Tenant a separate package; however, I am satisfied both Tenants were served given the package was addressed to both Tenants and both Tenants lived at the rental unit at the time.

I also note that the Tenants vacated the rental unit October 31, 2018. However, the Canada Post website shows that a notice card was left for the Tenants on October 30, 2018 in relation to the package. I accept the undisputed testimony of the Representative and find the Tenants continued to reside at the rental unit on October 30, 2018. I therefore find the Tenants are deemed to have received the package pursuant to section 90 of the *Act*. I note that the Tenants were not permitted to avoid service by failing to pick up the package.

The Representative advised that the evidence submitted December 2, 2018 was not served on the Tenants. I have not considered this evidence given it was not served on the Tenants as required under the Rules of Procedure and given the Tenants were not present at the hearing to address this issue.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all relevant admissible documentary evidence submitted and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord submitted a written tenancy agreement as evidence. It is between the Landlord and Tenants regarding the rental unit. The agreement started July 1, 2017 and is a fixed term tenancy ending June 30, 2019. The Representative advised that the tenancy started July 1, 2013. Rent is \$2,060.00 per month due on the first day of each month. The Tenants paid a \$950.00 security deposit. The agreement is signed by both Tenants and on behalf of the Landlord. There is an addendum that is not in evidence; however, the Representative advised it is not relevant.

The Representative testified that the Tenants stayed in the rental unit until October 31, 2018 but did not pay rent for October. The Representative advised the Landlord is seeking the unpaid rent for October. The Representative testified that the Tenants did not have authority under the *Act* to withhold rent for October.

The Representative testified that the Tenants paid rent through pre-authorized payments each month. She said the Tenants stopped the payment for October. The Representative testified that the Tenants did not subsequently pay the rent for October.

The Landlord had submitted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 11, 2018 for \$2,060.00 owing as of October 1, 2018 (the "10 Day Notice"). The Representative testified that the 10 Day Notice was served on the Tenants October 12, 2018. The Landlord submitted a Proof of Service and registered mail information in this regard.

The Landlord submitted a rent ledger showing the October rent payment was stopped or recalled and that \$2,060.00 remained outstanding as of October 23, 2018.

Analysis

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the other for damage or loss that results.

Based on the written tenancy agreement, and undisputed testimony of the Representative, I accept that the Tenants were obligated to pay \$2,060.00 in rent for October by October 1, 2018.

I note that the Tenants were served with the 10 Day Notice with an effective date of October 26, 2018 and a One Month Notice to End Tenancy for Caused with an effective date of October 30, 2018. However, the Representative testified that the Tenants stayed in the rental unit until October 31, 2018 and I accept this undisputed testimony. I find the Tenants were obligated to pay \$2,060.00 for October rent.

Based on the undisputed testimony of the Representative, the 10 Day Notice and the rent ledger, I accept that the Tenants stopped their October rent payment and therefore did not pay rent for October. I accept the undisputed testimony of the Representative that the Tenants did not subsequently pay rent. Further, I accept the undisputed testimony of the Representative that the Tenants did not have authority under the *Act* to withhold rent for October.

Given the above, I find the Tenants failed to comply with section 26(1) of the *Act* and their tenancy agreement by failing to pay rent for October despite remaining in the rental unit until October 31, 2018. I find the Landlord is entitled to recover the unpaid rent for October.

Given the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$2,160.00. Pursuant to section 72(2) of the *Act*, the Landlord is permitted to keep the \$950.00 security deposit towards the monies owed. The Landlord is entitled to a further Monetary Order in the amount of \$1,210.00.

Conclusion

The Application is granted. The Landlord is entitled to recover the unpaid rent for October. The Landlord is entitled to reimbursement for the filing fee. The Landlord is permitted to keep the \$950.00 security deposit towards the monies owed. The Landlord is entitled to a further Monetary Order in the amount of \$1,210.00 and I issue the Landlord this Order. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: December 04, 2018

Residential Tenancy Branch