



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction and Preliminary Matters

On November 8, 2018, the Landlord submitted an Application for Dispute Resolution by way of an *ex parte* Direct Request Proceeding under the *Residential Tenancy Act* (the "Act"). The Landlord requested an Order of Possession due to unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the filing fee. The Landlord's evidence for the Direct Request was reviewed and found to be incomplete; therefore, the matter was set for a participatory hearing via conference call.

The Landlord and Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the Landlord's documentary evidence and that the Tenants did not submit any documentary evidence.

The Landlord stated that she received a use and occupancy payment for November 2018 and no longer required a Monetary Order for unpaid rent.

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

Issues to be Decided

Should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Should the Landlord be compensated for the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Tenants and the Landlord agreed on the following terms of the tenancy:

The one-year, fixed term tenancy began on December 20, 2017. The monthly rent is \$1,175.00 and is due on the first of each month. The Landlord collected and still holds a security deposit of \$588.00.

The Landlord stated that the Tenants did not pay their November 2018 rent on November 1, 2018; therefore, she issued a 10-Day Notice to End Tenancy for Unpaid Rent, dated November 2, 2018 (the "Notice"), by serving it to the Tenants personally and by registered mail. The Notice stated that the Tenants had to either pay their rent within five days, dispute the Notice or move out of the rental unit by November 12, 2018.

The Landlord testified that the Tenants did not pay their rent until November 21, 2018 and she issued them a receipt that noted the payment was accepted for use and occupancy only.

The Tenants testified that they have been paying their rent mid-month since the beginning of the tenancy as their disability cheques would come in mid-month. They would always pay a late fee, and this seemed to be an acceptable arrangement with the management.

The Landlord stated that the rent is due on the first of each month; however, that her boss had accepted the fact that the Tenants' received their disability cheques late in the month and was accepting the late rent with the late fees. The Landlord said that there had recently been a violent domestic in the rental unit and therefore, the Landlord wasn't going to accept the late rent anymore and issued the 10-Day Notice to End Tenancy for Unpaid Rent.

The Tenants stated that they would like to continue the tenancy and would attempt to pay their rent by the first of each month.

The Landlord has requested an Order of Possession for the rental unit.

Analysis

Section 26 of the Act explains that the Tenants must pay rent when it is due under the Tenancy Agreement.

I accept the undisputed testimony that the Tenancy Agreement stated that rent is due on the first of each month. However, I find that the Landlord had established alternate

arrangements, for the benefit of the Tenants, to accept their late rent and late fees based on when the Tenants received their disability cheques. Both parties agreed that this informal arrangement had been acceptable for the term of the tenancy.

I find that the Landlord's issuance of the Notice, dated November 2, 2018, did not provide the Tenants enough notice that the rent was now going to be due on the first of each month and that the Landlord was intent on re-establishing this term. Furthermore, I accept the Landlord's testimony and I find that the Notice was served to the Tenants, not based on unpaid rent, but because of an alleged domestic violence incident that disturbed the occupants of the residential property.

I find that the Notice is not valid and as a result, I dismiss the Landlord's Application for an Order of Possession, pursuant to Section 55 of the Act.

I find that the Landlord's Application was unsuccessful, and that the Landlord should not be compensated for the cost of the filing fee.

As a result of this hearing and for the information of all parties, I find that the Landlord has re-established the term of the Tenancy Agreement where the rent is due on the first of each month.

Conclusion

I dismiss the Landlord's Application for an Order of Possession.

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: December 04, 2018

Residential Tenancy Branch