



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPRM-DR, FFL

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 40 minutes.

Preliminary Issue - Previous Hearings and Service of Documents

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing ("original hearing"). A decision, dated October 23, 2018, ("original decision"), was issued by an Adjudicator for the direct request proceeding. The original decision was based on the landlord's paper application only, with no submissions made by the tenants. The original decision granted the landlord a two-day order of possession ("original order of possession") and a \$1,300.00 monetary order ("original monetary order") for October 2018 rent of \$1,200.00 and the \$100.00 application filing fee, against the tenants.

The tenants applied for a review of the direct request decision, alleging fraud. A new review hearing was granted by a different Arbitrator, pursuant to a review consideration decision, dated October 27, 2018 ("review decision"). As per the review decision, the tenants were required to serve the landlord with a copy of the review decision and the notice of review hearing.

The tenants stated that they served the landlord with the above documents in person two days after they received them. However, they could not recall the date they received the documents. The landlord confirmed that the tenants did not serve her with any documents to attend this review hearing. She said that she received a copy of the notice of review hearing from the Residential Tenancy Branch ("RTB") directly, not from the tenants. However, at the hearing, the landlord confirmed that she wanted to proceed with this hearing. Accordingly, I proceeded with the hearing on the basis of the landlord's consent. I find that the landlord was sufficiently served with the above documents upon receipt from the RTB as per section 71(2)(c) of the *Act*.

Preliminary Issue - Service of Landlord's Original Application and 10 Day Notice

The landlord's original application indicates that on October 17, 2018, she sent two copies of her original application by way of registered mail to the rental unit. The landlord provided two Canada Post receipts and tracking numbers to confirm these mailings. The tenants stated that they received the original application but not the text messages that the landlord submitted as evidence. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's original application. I notified both parties that I could not consider the landlord's text messages because the tenants did not receive copies of it.

The tenants stated that they did not serve a copy of their written evidence package, of text messages, to the landlord. They said that they did not know they were required to serve this evidence because no one at the RTB told them to do so. The landlord said that she did not receive these text messages. I notified both parties that I could not consider the tenants' text messages because the landlord did not receive copies of it.

The landlord testified that the tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 4, 2018 ("10 Day Notice"), by way of posting to their rental unit door on the same date. The tenants stated that they received the 10 Day Notice but they did not recall receiving it on their door, but they got a copy from the police. They could not recall the date they received it from the police. In accordance with section 71(2)(c) of the *Act*, I find that the tenants were sufficiently served with the landlord's 10 Day Notice.

At the outset of the hearing, the tenants confirmed that they were forced out of the rental unit by a bailiff on November 8, 2018. They stated that they did not intend to return to the rental unit, as they had found a new place to live. The landlord confirmed

that she took back possession of the rental unit and she did not require an order of possession against the tenants.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

Both parties agreed to the following facts. This tenancy began on May 2, 2018 and ended on November 8, 2018. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties.

The landlord testified that the tenants paid her a security deposit of \$400.00, as per the written tenancy agreement. The tenants stated that they paid a security deposit of \$600.00, which was half a month's rent, to the landlord. They said that they had proof through their bank records but had not submitted a copy of it for this hearing.

The landlord indicated that a 10 Day Notice was issued to the tenants for failure to pay rent of \$1,200.00 to the landlord, due on October 1, 2018. The landlord testified that the tenants failed to pay rent for October 2018. The tenants said that they paid this rent in full to the landlord on October 7, 2018, by cash but the landlord did not give them a rent receipt. They stated that they paid rent in cash because the landlord insisted on it and they never received rent receipts from the landlord throughout this tenancy. They claimed that they did not have bank records to prove this rent payment because they withdrew money from their bank accounts at different dates for different amounts. They also claimed that they saved up cash throughout the month from different work jobs so they did not withdraw \$1,200.00 at one time from the bank to pay the rent.

The landlord seeks \$1,200.00 for October 2018 rent as well as the \$100.00 application filing fee.

Analysis

While I have turned my mind to the testimony of both parties and the documentary evidence, not all details of the submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Section 26 of the *Act* requires the tenants to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, both parties agreed is the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the tenants failed to pay rent of \$1,200.00 for October 2018 to the landlord. I find that the tenants failed to provide documentary proof of this payment for rent. Even if they did not receive a rent receipt from the landlord, they could have provided bank records, even for multiple dates and withdrawals, showing that they withdrew the cash and provided it to the landlord. They could have provided witness testimony or statements to prove that they made the cash payments to the landlord. They could have paid using an alternate method, since they said the landlord never gave them rent receipts throughout the tenancy. These include money orders and certified cheques, which are equivalent to cash, and both offer proofs of payment from the bank.

As the landlord was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the tenants.

Section 82(3) of the *Act* states:

Following the review, the director may confirm, vary or set aside the original decision or order.

Accordingly, I vary the original decision and monetary order, both dated October 23, 2018. The original order of possession is no longer required by the landlord.

The Adjudicator at the original hearing awarded the landlord \$1,300.00 for October 2018 rent and the filing fee in the original monetary order.

I issue a new monetary order to the landlord in the amount of \$900.00 against the tenants. This includes October 2018 rent of \$1,200.00 and the \$100.00 application filing fee. It also allows the landlord to offset the tenants' security deposit of \$400.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' entire security deposit of \$400.00. No interest is payable on the

deposit during the period of this tenancy. I find that the tenants only paid a \$400.00 deposit to the landlord, as per the landlord's testimony, because the tenants failed to provide bank records, which they said they could have obtained for this hearing, in order to prove that they paid \$600.00 to the landlord for the deposit.

Conclusion

The original decision and monetary order, both dated October 23, 2018, are varied by way of this decision. The original order of possession is no longer required.

I order the landlord to retain the tenants' entire security deposit of \$400.00.

I issue a new monetary order in the landlord's favour in the amount of \$900.00 against the tenants. The tenants must be served with this Order as soon as possible. Should the tenants 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: December 06, 2018

Residential Tenancy Branch