



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, PSF, FFT; OPR-DR, MNRL, FFL

Introduction

This hearing was scheduled in response to the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62;
- an order for the landlord to provide services or facilities required by law pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

This hearing was also scheduled in response to the landlord's cross application 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 from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing to present her claim; consequently the tenant's entire application is dismissed without leave to reapply.

The landlord and his agent (collectively "the landlord") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord testified that the tenant was personally served with the landlord's hearing package including an amendment ("hearing package") on November 21, 2018 at the rental unit where the tenant was residing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's hearing package on November 21, 2018, the day it was served.

Preliminary Issue – Withdrawal

At the commencement of this hearing, the landlord testified that the tenant vacated the rental unit on December 14, 2018. As the landlord has obtained vacant possession of the rental unit, the landlord withdrew his application to obtain an order of possession on the basis of the 10 Day Notice. This portion of the landlord's application is hereby withdrawn.

Preliminary Issue – Amendment of Landlord's Application

The landlord confirmed that he wished to amend the landlord's application to increase his monetary claim to include half of December's rent in the amount of \$280.00. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if they did not pay the rent or vacate the rental unit to allow it to be re-rented. Based on the undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlord's application to include a monetary claim for half of December unpaid rent in the amount of \$280.00.

Issue(s) to be Decided

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

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on October 1, 2018 on a fixed term until April 30, 2019. Rent in the amount of \$560.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$280.00 at the start of the tenancy, which the landlord still retains in trust.

The landlord seeks a monetary order of \$720.00 for unpaid rent for November and half of December 2018. The landlord claimed that the tenant has paid \$120.00 in rent for the above one and a half months. The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that

a tenant who does not comply with the *Act, Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$560.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent for November and December 2018. Therefore, I find that the landlord is entitled to \$720.00 in rent.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$280.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$440.00. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$540.00.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

The landlord's application for an order of possession is withdrawn.

I issue a monetary order in the landlord's favour in the amount of \$540.00.

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: January 03, 2019

Residential Tenancy Branch