



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL OPRM**

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 46;
- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to call witnesses, and to make submissions. The tenant did not attend at the hearing. I kept the teleconference line open from the time the hearing was scheduled, plus an additional fifteen minutes, to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

This matter was initiated as Direct Request Proceeding and it was adjourned to a participatory hearing. The landlord testified that he served the Notice of Reconvened Hearing, the interim decision and landlord’s evidence on the tenant by registered mail sent on November 27, 2018. In support of service, the landlord provided the Canada Post tracking number, referenced on the first page of this decision. Based on the submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Notice of Reconvened Hearing, the interim decision and landlord’s evidence on December 2, 2018.

Preliminary Matters:

Request to Amend Application to Apply Security Deposit to Rent Arrears

The landlord also requested authorization to apply the security deposit paid by the tenant to the monetary award pursuant to section 72. The landlord testified the tenant paid a security deposit at the beginning of the tenancy of \$790.00 which the landlord still holds. The tenant has not provided authorization to the landlord to apply the security deposit to outstanding rent.

Section 4.2 of the *Rules of Procedure* provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated. I find that the tenant could reasonably anticipate the landlord would seek to apply the security deposit to outstanding rent. I find the amendment would not be prejudicial to the respondent. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's application to allow the landlord to apply the security deposit to the monetary award pursuant to section 72.

Possession

At the outset of this hearing the landlord testified that the tenant vacated the property in December 2018 and the landlord withdrew his request for an order of possession. The landlord's application for an order of possession is accordingly dismissed.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement dated January 5, 2018, indicating a monthly rent of \$1,580.00, due on the fifth day of each month with a security deposit of \$790.00;
- A copy of the Ten-Day Notice dated November 6, 2018 for \$1,580.00 in unpaid rent due on November 6, 2018, with a stated effective vacancy date of November 16, 2018; and,
- A copy of the unwitnessed proof of service of the 10-Day Notice showing that the landlord served the notice to the tenant by posting the 10-Day Notice on the tenant's door on November 6, 2018.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord testified that the tenant did not pay the rental arrears within five days.

The landlord testified the tenant owes outstanding rent of \$1,580.00 for November 2018. The landlord testified that the tenant vacated the property before the December 2018 rent became due.

Analysis

I have reviewed all documentary evidence provided by the landlord, and I find that the tenant was duly served with the Notice of Application for Dispute Resolution.

I accept the landlord's evidence that the tenant owed the landlord rent payments of \$1,580.00 per month under the tenancy agreement and I find that the tenant has not paid the landlord the rent owed for November 2018. Based on the uncontradicted evidence of the landlord, I grant the landlord a monetary award pursuant to section 67 for outstanding rent in the amount of \$1,580.00.

As the landlord was successful in this application, I award the landlord the amount of \$100.00 for reimbursement of the filing fee.

Further to section 72, I award the landlord authority to apply the security deposit to the monetary award.

In summary, I grant the landlord a monetary order for **\$890.00** calculated as follows:

ITEM	AMOUNT
Outstanding rent November 2018	\$1,580.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$790.00)
TOTAL	\$890.00

Conclusion

I grant the landlord a monetary order in the amount of **\$890.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to be 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: January 14, 2019

Residential Tenancy Branch