



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 landlords' 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.

Landlord EW ("male landlord") did not attend this hearing, which lasted approximately 36 minutes. The female landlord ("landlord"), the landlords' agent, the landlords' two lawyers, lawyer KY ("landlords' lawyer") and "lawyer PL," and the female tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had permission to represent the male landlord (collectively "landlords") and that her agent and two lawyers had permission to speak on both tenants' behalf at this hearing.

The hearing began at 9:30 a.m. with me, the landlord, the landlords' agent and the landlords' two lawyers present. The tenant called into the hearing late at 9:38 a.m., stating that she was late because she had children. I told the tenant about what occurred in her absence. The tenant confirmed that she received the review hearing documents, served it to the landlords, and was aware of the landlords' original application. The tenant could be heard talking to and taking care of her child during the hearing. The tenant disconnected from the hearing without warning, while she could be heard talking to her child, at 9:41 a.m. The tenant did not call back into the conference, despite the fact that the hearing ended at 10:06 a.m.

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 January 8, 2019, ("original decision"), was issued by an Adjudicator for the direct request proceeding. The original decision was based on the landlords' paper application only, with no submissions made by the tenants. The original decision granted the landlords a two-day order of possession ("original order of possession") and a \$2,695.00 monetary order ("original monetary order") for November 2018 rent of \$2,595.00 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 January 21, 2019 ("review decision"). As per the review decision, the tenants were required to serve the landlords with a copy of the review decision and the notice of review hearing.

The tenant confirmed that she received and served the landlords with the above review documents. The landlords' lawyer confirmed receipt of the above review documents. Accordingly, I find that the landlords were served with all of the required review documents, as per section 89 of the *Act*.

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

The landlords' lawyer stated that the tenants were each served with a separate copy of the landlords' original application on December 27, 2018, by way of registered mail to the rental unit. The landlords provided a copy of the two Canada Post receipts and tracking numbers to confirm these mailings. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlords' original application on January 1, 2019, the fifth day after their registered mailings.

The landlord testified that she personally served the male tenant with the landlords' written evidence package on February 12, 2019. In accordance with section 88 of the *Act*, I find that both tenants were served with the landlords' written evidence package on February 12, 2019.

The landlord testified that she personally served both tenants with the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 25, 2018 ("10 Day Notice"). The landlords provided a signed, witnessed proof of service which is signed

by both tenants and a witness to confirm service. In accordance with section 88 of the Act, I find that both tenants were served with the landlords' 10 Day Notice on November 25, 2018.

Preliminary Issue – Increasing Landlords' Monetary Claim

The landlords' lawyer requested an increase to the landlords' monetary order that was originally requested in the original hearing. He said that since November 2018 rent was awarded in the original decision, the tenants failed to pay December 2018 to March 2019 rent, inclusive.

Pursuant to section 64(3)(c) of the Act, I amend the landlords' application to increase the monetary claim to include December 2018 to March 2019 rent. The tenants are aware that rent is due on the first day of each month. The tenants continue to reside in the rental unit, despite the fact that a 10 Day Notice required them to vacate earlier for failure to pay the full rent due. Therefore, the tenants knew or should have known that by failing to pay their rent, the landlords would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord's claim for increased rent, despite the fact that the tenant did not attend the full hearing. Therefore, I heard the landlords' claim for unpaid rent below.

Preliminary Issue – Confirming Original Decision and Orders

Section 82(3) of the Act states:

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

The tenants reviewed the original decision and orders. The tenant confirmed that she received the review documents and served them to the landlords. The tenant attended a portion of this hearing and then disconnected from the hearing early without disputing the landlords' evidence.

Accordingly, I confirm the original decision, original order of possession and original monetary order, all dated January 8, 2019.

Issue to be Decided

Are the landlords entitled to an increased monetary award for unpaid rent?

Background and Evidence

The landlords' lawyer confirmed the following facts. This tenancy began on September 7, 2018. Monthly rent in the amount of \$2,595.00 was payable on the first day of each month. A security deposit of \$1,297.50 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit.

The landlords' lawyer indicated that a 10 Day Notice was issued to the tenants for failure to pay rent of \$2,595.00 to the landlords, due on November 1, 2018. The landlord testified that she and her brother-in-law met the tenants on November 25, 2018, in order to serve them with the 10 Day Notice. She said that the tenants requested more time to pay the rent. She claimed that she agreed the tenants could pay rent by December 15, 2018 but if they did not, they would have to vacate a few days after that. She stated that the tenants never paid the rent as agreed. She claimed that later during a phone call with the male tenant, she offered to waive the November and December 2018 rent if the tenants agreed to move out in a few days but the male tenant became upset and called the police. She said that she did not waive the rent because the tenants did not move out in a few days. The landlord testified that her mother-in-law never received any rent from the tenants as claimed in the tenants' review application evidence. She stated that neither the landlords, nor anyone on behalf of the landlords, received any rent from the tenants from November 2018 to March 2019.

The landlords' lawyer stated that the tenants failed to pay rent for November 2018, as well as each month after that from December 2018 to March 2019, inclusive. The landlords seek an additional \$2,595.00 for rent for each month from December 2018 to March 2019, totalling \$10,380.00.

Analysis

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

The landlords provided undisputed evidence at this hearing, as the tenant did not dispute the landlords' evidence. The tenants failed to pay the full rent due on November 1, 2018, within five days of receiving the 10 Day Notice. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day

Notice. Although the tenants reviewed the original decision, the tenant did not remain at this hearing in order to dispute the landlords' evidence.

In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on December 6, 2018, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by December 6, 2018. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*. The original order of possession has already been issued at the original hearing and I confirm it.

Section 26 of the *Act* requires the tenants to pay monthly rent to the landlords on the date indicated in the tenancy agreement, which in this case, 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 landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlords provided undisputed evidence that the tenants failed to pay rent totalling \$13,075.00 from November 1, 2018 to March 31, 2019, with rent at \$2,595.00 per month. Although this hearing occurred on March 4, 2019, I find that rent was due on March 1, 2019. I find that the landlord would have been unable to rent the unit for March 1, 2019, as the tenants are still residing in the rental unit as of the date of this hearing.

The Adjudicator at the original hearing awarded the landlord \$2,595.00 for November 2018 rent in the original monetary order and I confirm it.

Therefore, this review hearing decision should be read together with the original decision. I issue a new monetary order in addition to the original monetary order of \$2,695.00. The landlords are entitled to a new monetary order of \$10,380.00 against the tenants, which includes rent from December 1, 2018 to March 31, 2019. As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee from the tenants. The original monetary order has already been issued at the original hearing, including the award for the filing fee.

I caution the tenants to review section 79(7) of the *Act*, which states that a party may only apply once for a review consideration:

(7) A party to a dispute resolution proceeding may make an application under this section only once in respect of the proceedings.

Conclusion

This review hearing decision should be read together with the original decision, dated January 8, 2019.

The original decision, original order of possession and original monetary order, all dated January 8, 2019, are confirmed.

I issue a new monetary order in the landlords' favour in the amount of \$10,380.00 against the tenants. The tenants must be served with this Order as soon as possible. Should the tenant 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: March 07, 2019

Residential Tenancy Branch