



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing dealt with the adjourned Direct Request Application by the Landlord filed under the Residential Tenancy Act (the “Act”), for an order of possession to enforce a 10-Day Notice for Unpaid Rent (the Notice) issued on January 12, 2019, a monetary order for unpaid rent, and to recover the filing fee paid for this application. The matter was set for a conference call.

One of the Landlord’s attended the hearing and was affirmed to be truthful in his testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the Act states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution, and Notice of Hearing had been sent to the Tenants by registered mail on February 15, 2019, four Canada post tracking numbers were provided as evidence of service. I find that the Tenants have been duly served in accordance with the Act.

The Landlord was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

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 is described in this decision.

Issues to be Decided

- Are the Landlords entitled to an order of possession pursuant to section 46 of the Act?
- Are the Landlords entitled to a monetary order for unpaid rent?
- Are the Landlords entitled to the return of their filing fee?

Background and Evidence

The Landlord testified that the tenancy began two years ago, but that a new tenancy agreement had been signed listing the start of tenancy as January 1, 2019, as a one-year fixed tenancy; rent in the amount of \$1,900.00 is to be paid by the first day of each month and that the Tenants had paid an \$800.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the new tenancy agreement into documentary evidence.

The Landlord testified that he served the Tenants with the Notice to End Tenancy by personally delivering it to the Tenants on January 12, 2019. The Notice informed the Tenants of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenants that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenants are presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenants had not paid the outstanding rent for January as indicated on the Notice. The Landlord also testified that the Tenants had not paid the rent for the subsequent months of February and March 2019.

The Landlord also testified that the Tenants had moved out of the rental unit on March 14, 2019, and that he no longer needed an Order of Possession. The Landlord testified that he is seeking a monetary order for the outstanding rent for January, February and March 2019.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

I find that the Tenants were deemed to have received the Notice on January 12, 2019. I also find that the Tenants have not paid the rent or disputed the Notice and are conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55 of the *Act* states that a Landlord is entitled to request an order of possession when a tenant has not disputed the Notice.

Therefore, I find that the Landlord has established an entitlement to a monetary award for loss of three months rent and is authorized to retain the Tenants' security deposit as partial satisfaction of this award.

As the Landlord has been successful in this application, I also find that the Landlord is entitled to recover his \$100.00 filing fee for this hearing.

I grant the Landlord a monetary order in the amount of \$5,000.00; consisting of \$5,700.00 in unpaid rent, \$100.00 for the recovery of the filing fee, less the security deposit of \$800.00 that the Landlord is holding.

Conclusion

I grant the Landlord a **Monetary Order** in the amount of **\$5,000.00**. The Landlord is provided with this Order in the above terms, and 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: March 15, 2019

Residential Tenancy Branch