



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL; CNR, ERP, RP, FFT

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 his application, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 4, 2019 ("10 Day Notice"), pursuant to section 46;
- an order requiring the landlord to complete emergency and regular repairs to the rental unit, pursuant to section 33; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The "female tenant" did not attend this hearing, which lasted approximately 19 minutes. The landlord and the male "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's wife was observing the hearing, but she did not testify. The tenant confirmed that he had permission to represent the female tenant named in both parties' applications, as an agent this hearing.

The landlord testified that both tenants were served with a separate copy of the landlord's application for dispute resolution hearing package on March 20, 2019, both by way of registered mail to the rental unit where the tenants were still residing. The landlord provided two Canada Post receipts and tracking numbers with his application. The landlord confirmed the two tracking numbers verbally during the hearing. The

Canada Post website indicates that a notice card was left for both packages on March 25, 2019. The tenant said that he checked his mail before he vacated the rental unit on March 31, 2019, but he did not receive the applications. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on March 25, 2019, five days after their registered mailings.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The tenant confirmed that he did not want to pursue the tenants' application because they no longer required the relief. He said that the tenants vacated the rental unit on March 31, 2019. I notified him that the tenants' entire application, including the \$100.00 application filing fee, was dismissed without leave to reapply. He confirmed his understanding of same.

The landlord stated that he did not require an order of possession against the tenants because he had taken back possession of the rental unit and changed the locks. Accordingly, this portion of the landlord's application is dismissed without leave to reapply.

Issues to be Decided

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

Is the landlord entitled to recover the filing fee paid for his application?

Background and Evidence

Both parties agreed to the following facts. This tenancy began on January 1, 2019 and ended on March 31, 2019. Monthly rent in the amount of \$1,795.00 was payable on the first day of each month. A security deposit of \$897.50 and a pet damage deposit of \$897.50 were paid by the tenants and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties.

The landlord seeks a monetary order of \$1,795.00 for unpaid rent for March 2019 plus recovery of the \$100.00 filing fee paid for his application. The tenant said that the tenants did not pay March 2019 rent of \$1,795.00 because of the rodents in the rental

unit, no running water, and they were advised not to do so by the local health authority. He claimed that the landlord was not entitled to the rent.

Analysis

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which is the first day of each month in this case. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *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 a tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Both parties provided undisputed evidence that the tenants failed to pay rent of \$1,795.00 for March 2019. The tenants did not have an order from an Arbitrator to deduct any amount from rent, nor did they provide proof that they could deduct from rent any emergency repairs after following the process in section 33 of the *Act*. Therefore, I find that the landlord is entitled to \$1,795.00 in unpaid rent for March 2019, from the tenants.

The landlord continues to hold the tenants' security and pet damage deposits totalling \$1,795.00. Over the period of this tenancy, no interest is payable on the deposits. Although the landlord did not apply to retain the deposits, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' entire security and pet damage deposits totalling \$1,795.00.

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

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$100.00 against the tenants, for the landlord's filing fee application. 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.

I order the landlord to retain the tenants' entire security and pet damage deposits totalling \$1,795.00.

The landlord's application for an order of possession for unpaid rent, is dismissed without leave to reapply.

The tenants' entire application is dismissed without leave to reapply.

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: April 08, 2019

Residential Tenancy Branch