



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR (Tenants)
 FFL, OPRM-DR (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their application March 04, 2019 (the "Tenants' Application"). The Tenants applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Tenants also sought to reduce rent for repairs, services or facilities agreed upon but not provided.

The Landlord filed the application March 08, 2019 (the "Landlord's Application"). The Landlord applied for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 28, 2019 (the "Notice"). The Landlord also sought to recover unpaid rent and reimbursement for the filing fee.

The Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenants.

The Landlord advised at the outset that the Tenants had been removed from the rental unit by a bailiff on March 28, 2019 and that he no longer sought an Order of Possession for the rental unit. The Landlord advised that he received an Order of Possession previously on File Number 1 as noted on the front page of this decision.

I looked File Number 1 up and confirmed that the Landlord was issued an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent dated March 02, 2019. The Landlord was also issued a Monetary Order for \$1,650.00 for unpaid rent owing for March of 2019.

The Landlord confirmed he is still seeking unpaid rent for February at this hearing.

I explained the hearing process to the Landlord who did not have questions in this regard. The Landlord provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenants had not. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified that the hearing package and evidence were served on the Tenants personally in the first or second week of March. He said Tenant D.E. was served at the rental unit and Tenant N.N. was served at the hospital.

Based on the undisputed testimony of the Landlord, I find the Tenants were served with the hearing package and evidence in accordance with sections 88(a) and 89(1)(a) of the *Residential Tenancy Act* (the "*Act*"). I accept the undisputed testimony of the Landlord in relation to when the packages were served and find they were served in sufficient time to allow the Tenants to prepare for, and appear at, the hearing.

The Tenants would have been aware of the hearing as the Tenants' Application was scheduled for the same date and time.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants.

Rule 7.3 of the Rules of Procedure states that an arbitrator can dismiss an Application for Dispute Resolution without leave to re-apply if a party fails to attend the hearing.

Given the Tenants did not appear at the hearing, I have no evidence before me as to the basis for the Tenants' Application. In the absence of evidence from the Tenants, the Tenants' Application is dismissed without leave to re-apply.

The Landlord was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started February 15, 2019 and was for a fixed term ending February 14, 2020. Rent was \$1,650.00 per month due on the first day of each month. The Landlord testified that no security deposit was ever paid. The agreement is signed by the parties.

The Landlord testified that he served the Notice on the Tenants in person February 28, 2019. The Landlord had submitted a Proof of Service signed by a witness confirming this.

The Notice states that \$1,925.00 was due February 20, 2019. At first, the Landlord testified that this amount included March rent. The Landlord then testified that it included the security deposit.

The Landlord confirmed the following. The tenancy started February 15, 2019 and therefore the Tenants were only required to pay half of the monthly rent for February. Therefore, the Tenants were only required to pay \$825.00 in rent for February. The Tenants paid \$550.00 in rent on February 24, 2019. Therefore, the Tenants owed \$275.00 in rent when the Notice was issued.

The Landlord testified that the Tenants did not pay any further rent after the \$550.00 paid February 24, 2019. The Landlord confirmed \$275.00 in rent is currently outstanding. The Landlord testified that the Tenants did not have authority under the *Act* to withhold rent.

Analysis

Section 7 of the *Act* states that a party that does not comply with the *Act*, regulations or their tenancy agreement must compensate the other party for damage or loss that results.

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Based on the undisputed testimony of the Landlord and written tenancy agreement, I accept the following. The tenancy started February 15, 2019. Rent was \$1,650.00 per month due on the first day of each month. The Tenants were only required to pay \$825.00, being half of the monthly rent, for February.

I accept the undisputed testimony of the Landlord that the Tenants did not have a right to withhold rent for February under the *Act*. There is no evidence before me that the Tenants did have such authority. Therefore, I find the Tenants were required to pay \$825.00 in rent for February under section 26(1) of the *Act*.

Based on the undisputed testimony of the Landlord and in part on the Notice, I accept that the Tenants failed to pay rent as required. Based on the undisputed testimony of the Landlord, I accept that the Tenants paid \$550.00 in rent on February 24, 2019 and no further rent. Therefore, I accept that the Tenants currently owe \$275.00 in rent for February of 2019 and find the Landlord is entitled to this amount.

As the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Pursuant to section 67 of the *Act*, I award the Landlord a Monetary Order for \$375.00.

Conclusion

The Tenants' Application is dismissed without leave to re-apply.

The Landlord is entitled to monetary compensation in the amount of \$375.00. I issue the Landlord a Monetary Order in this amount. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: April 18, 2019

Residential Tenancy Branch