



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPRM-DR

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for unpaid utilities pursuant to section 67; and,
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlords attended the hearing. The landlords had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled hearing time for the duration of the hearing to allow the tenant the opportunity to call. The teleconference system indicated only the landlords and I had called into the hearing. I confirmed the correct participant code was provided to the tenant.

The landlords filed their Application for Dispute Resolution on April 11, 2019 and they testified that they personally served the tenant with an application for a direct request on the same day. The application for dispute resolution requested a monetary award of \$2,400.00 for unpaid rent. On April 12, 2019, a decision was entered on the direct request reconvening this matter to this participatory hearing. The direct request decision

stated that the applicant needed to serve the tenant with the Notice of Reconvened Hearing and the interim decision within three days.

The landlords testified that they personally served the tenant with the Notice of Reconvened Hearing and the interim decision on May 10, 2019. The landlords testified that it took a long time to serve the tenants because they did not know where he was. I find that the tenant was deemed served with Notice of Reconvened Hearing and the interim decision on May 10, 2019.

The landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Ten-Day Notice") on April 2, 2019. The Ten-Day Notice stated unpaid rent of \$2,400.00 as of April 1, 2019. The landlords testified that the Ten-Day Notice was served on the tenant by personally delivering the notice to the tenant's daughter who immediately delivered the notice to the tenant. Section 88(e) of the *Act* permits the service of notice to end tenancy by leaving a copy at the person's residence with an adult who apparently resides with the person. Although the landlords did not know whether the tenant's daughter was an adult, the landlords testified that the tenant did confirm that he received the Ten-Day Notice. As such, I find that the ten-Day Notice was sufficiently served pursuant to section 71(2)(c) of the *Act*.

At the outset of the hearing the landlords testified that the tenant has already vacated the rental unit in April 2019 so an Order of Possession was no longer required. I confirmed that the Agents wished to withdraw the Application for an Order of Possession and the Application was amended accordingly.

Preliminary Matter: Request for Compensation for Unpaid Utilities

The application for dispute was filed on April 11, 2019 claiming monetary compensation for unpaid rent in the amount of \$2,400.00. The application for dispute did not make a monetary claim for unpaid utilities. Further, the Ten-Day Notice claimed \$2,400.00 in unpaid rent but the notice did not claim unpaid utilities. In addition, the Direct Request Worksheet requested compensation of \$2,400.00 for unpaid rent for March 2019 and April 2019. There was no request in the application or the supporting documents submitted with the application to support a request for compensation for unpaid utilities.

The landlords submitted utility statements and a revised Direct Request Worksheet to the Residential Tenancy Branch on May 15, 2019. The landlord did not provide evidence that these documents were served on the tenant. Although the landlords did not request an amendment to their application, I have interpreted that landlords request

for additional monetary compensation for unpaid utilities to be an amendment of their application for dispute resolution.

Residential Tenancy Branch *Rules of Procedure* Rule 4.2 permits an amendment of the Dispute Resolution Application “[i]n circumstances that can reasonably be anticipated...”

In this matter, the Notice of Dispute Resolution Proceeding served by the landlord only requested a monetary order for compensation for unpaid rent. The Notice of Dispute Resolution Proceeding did not state that the landlord wanted compensation for unpaid utilities. For the forgoing reasons, I do not find that the tenant could reasonably have anticipated that the landlords would amend their application to include a claim for compensation for unpaid utilities and, as such, I deny this request. The landlords’ application for a monetary compensation for unpaid utilities is denied with leave to reapply.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent pursuant to section 67?

Are the landlords entitled to recover their filing fee for this application from the tenant pursuant to section 72?

Background and Evidence

The parties entered a tenancy agreement on December 22, 2018. The monthly rent was \$1,200.00, due on the first of each month. The tenant paid security deposit of \$600.00

The landlords testified that the tenant did not pay rent for March 2019 or April 2019. The tenant vacated the rental unit at some time in April 2019.

Analysis

Based upon the undisputed testimony of the landlord and the terms of tenancy agreement, I find that the Tenant was obligated to pay the monthly rent in the amount of \$1,200.00, on time and in full each month, up to and including the rental period ending April 30, 2019.

I find that the tenant has not paid the rent for March 2019 or April 2019. Section 71(1) of the *Act* states that “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results.” Pursuant to section 71(1), I find the landlord is entitled to a monetary award of \$2,400.00 for unpaid rent in March 2019 and April 2019.

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$600.00 which may be deducted from the damages owed by the tenants pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlords have been successful this matter, I award the landlords \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

Accordingly, I find that the landlords are entitled to a monetary order of \$1,900.00, calculated as follows.

<u>Item</u>	<u>Amount</u>
May 2019 rent unpaid	\$1,200.00
April 2019 rent unpaid	\$1,200.00
Less security deposit	(\$600.00)
Filing fee	\$100.00
Total	\$1,900.00

Conclusion

I grant the landlords a monetary order in the amount of **\$1,900.00**. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court to be enforced as an order of that Court.

The landlords’ application for a monetary compensation for unpaid utilities is denied with 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: May 28, 2019

Residential Tenancy Branch