



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL MNRL OPR

Introduction

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

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The co-tenant TE (the "tenant") primarily spoke for both tenants.

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the landlord's 10 Day Notice to End Tenancy dated March 6, 2019, the application for dispute resolution dated March 15, 2019 and evidence. The tenants did not serve any evidence. Based on the testimonies I find that the tenants were served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed additional rent has come due. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as additional rent becoming due is reasonably foreseeable I amend the landlord's Application to increase the landlord's monetary claim from \$9,000.00 to \$12,600.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?
Is the landlord entitled to a monetary award as claimed?
Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

The landlord testified that this periodic tenancy began in October 2018. The monthly rent is \$1,800.00 payable by the 7th of each month. No security deposit or pet damage deposit were collected for this tenancy. There is no written tenancy agreement between the parties. The landlord testified that the tenants are also responsible for paying the utilities to the landlord. The landlord said that the tenants have failed to pay the security and pet damage deposit, and have not paid the monthly rent for December 2018, and January, February and March 2019. The landlord claimed that there was an arrear of \$9,000.00 as at March 6, 2019 when they issued the 10 Day Notice. The landlord said that the tenants have failed to pay rent for April and May 2019 and the arrears as of the date of the hearing May 7, 2019 is \$12,600.00.

The tenants say that the tenancy began in September 2018. They agree that the monthly rent is \$1,800.00 but say it is payable in two payments of \$900.00 on the 7th and 22nd of each month. The tenants say that the landlord has refused to provide a written tenancy agreement. The tenants disagree and say that utilities are not payable to the landlord. The tenants submit that the landlord did not request a security or pet damage deposit at the start of the tenancy. The tenants disagree that there is a rental arrear as claimed by the landlord.

Analysis

In accordance with Rule of Procedure 6.6, the evidentiary onus is on the applicant to show on a balance of probabilities the basis for their claim.

Section 46 provides that a landlord may issue a notice, complying with form and content requirement, to end tenancy if rent is unpaid on a day after the day the rent is due.

In the present case the parties agree that there is an oral tenancy agreement but disagree on much of the details. The landlord claims for a security deposit and pet

damage deposit that were not collected at the start of the tenancy as well as rent which they say has been unpaid since November 2018.

I find that the landlord has not met their evidentiary burden. I am not satisfied based on the testimonial evidence that there is an arrear for this tenancy that would give rise to the issuance of a Notice to End Tenancy. The landlord's calculation of arrear includes the amount of a security and pet damage deposit which do not constitute rent. While the tenants failed to dispute the 10 Day Notice within 5 days pursuant to section 46(4), I find that the landlord has not established that there was a basis to issue the Notice. Based on the conflicting evidence of the parties, I find that there is insufficient evidence to show on a balance of probabilities that the landlord had reason to issue the 10 Day Notice.

Similarly, I find that the landlord has not established on a balance that they have suffered a loss in the amount claimed. I find that there is insufficient evidence in support of the landlord's claim.

For the above reasons I dismiss the landlord's application in its entirety.

Conclusion

The landlord's 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: May 7, 2019

Residential Tenancy Branch