



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 was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 2, 2019 ("10 Day Notice"), for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

This proceeding began as an application through the Direct Request process, which was adjourned to a participatory hearing based on an Interim Decision dated April 15, 2019, which should be read in conjunction with this decision.

The landlord MD ("landlord") attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding ("Notice of Hearing"), application and documentary evidence were considered. The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding, which declares that on April 11, 2019, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord also submitted a total of four registered tracking numbers in evidence. Based on the above, I find that the tenant were deemed to have been served with the Direct Request Proceeding documents on April 16, 2019, the fifth day after their registered mailing, pursuant to section 90 of the *Act*.

In addition to the above, the landlord testified that tenant DA was served personally at the rental unit on April 20, 2019 and accepted the Notice of Adjourned Hearing and Interim Decision documents. Based on the above, I accept that the tenants were sufficiently served in accordance with the *Act*, with the Notice of Adjourned Hearing and Interim Decision documents. Therefore, the hearing continued without the tenants present and as such, I consider this application to be unopposed by the tenants.

Preliminary and Procedural Matters

The landlord testified that the tenants vacated the rental unit on April 23, 2019, since the application was filed on April 8, 2019, and as a result, an order of possession was no longer required. Therefore, I have not considered the landlord's request for an order of possession based on the 10 Day Notice.

The landlord confirmed the email addresses of the parties at the outset of the hearing. Accordingly, the decision will be emailed to the parties at the email addresses included in the landlord's application.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on March 1, 2019 and was scheduled to revert to a month to month basis on March 1, 2020. The landlord testified that the tenants vacated the rental unit on April 23, 2019, since the application was filed and have not provided a written forwarding address. During the tenancy monthly rent was \$1,500.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$750.00, which the landlord continues to hold and has accrued no interest to date. The landlord stated that if he was entitled, he would request to have the security deposit offset from any amount owed as the tenants failed to provide a written forwarding address since they vacated the rental unit.

The landlord's monetary claim of \$1,500.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
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1. Unpaid April 2019 rent	\$1,500.00
TOTAL	\$1,500.00

Regarding item 1, the landlord testified that the tenants failed to pay April 2019 rent and continue to owe the landlord \$1,500.00 in unpaid rent as a result. According to the landlord, the tenants did not dispute the 10 Day Notice and eventually vacated the rental unit on April 23, 2019; however, continue to owe the landlord \$1,500.00 in rent for April 2019.

The landlord is also seeking the recovery of the \$100.00 filing fee and to retain the tenants' security deposit of \$750.00 to offset the amount claimed, if they are entitled to do so under the *Act*.

Analysis

Based on the undisputed documentary evidence and undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As I have accepted that the tenants were served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, and as noted above, I consider this matter to be unopposed by the tenants. As a result, I find the landlord's application is fully successful in the amount of \$1,500.00 for April 2019 rent. I find the tenants breached section 26 of the *Act*, which requires that tenants pay their rent on the date that it is due. Therefore, I find the landlord has met the burden of proof in proving their entire claim of **\$1,500.00** as claimed for April 2019 rent.

As the landlord's claim was successful, I find the landlord is entitled to the recovery of the cost of the filing fee of **\$100.00** pursuant to section 72 of the *Act*, as their application was successful.

Based on the above, I find the landlord has established a total monetary claim of **\$1,600.00** comprised of \$1,500.00 as claimed plus the \$100.00 recovery of the cost of the filing fee.

As the landlord continues to hold the tenants' \$750.00 security deposit and pursuant to sections 38 and 72 of the *Act*, I authorize the landlord to retain the tenants' full security deposit of \$750.00, which has accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67

of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$850.00**.

I caution the tenants to comply with section 26 of the *Act* in the future.

Conclusion

The landlord's application is fully successful.

The landlord has established a monetary claim of \$1,600.00 and has been authorized to retain the tenants' full security deposit of \$750.00 including \$0.00 in interest, in partial satisfaction of the landlord's monetary claim.

The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$850.00. The landlord may enforce the monetary order in the Provincial Court (Small Claims Division).

The decision will be emailed to the parties. The monetary order will be emailed to the landlord only for service on the tenants.

The tenants have been cautioned to comply with section 26 of the *Act* in the future.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: June 12, 2019

Residential Tenancy Branch