



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL, OPRM-DR

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order of possession, for a monetary claim of \$2,030.00 for unpaid rent, and to recover the cost of his Application filing fee. However, as the Tenant had already moved out at the time of the hearing, the Landlord said he did not need an order of possession any longer; therefore, I dismiss that claim without leave to reapply.

The Landlord and his wife, C.C., appeared at the teleconference hearing and gave affirmed testimony. No one attended for the Tenant. The phone line remained open for over 45 minutes and was monitored throughout this time. Only Landlord and his wife called into the hearing.

I explained the hearing process to the Landlord and gave him an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide his evidence orally and to ask questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

The Landlord provided his email address at the outset of the hearing and confirmed his understanding that the decision would be emailed to him and mailed to the Tenant.

The Landlord said he served the Tenant with the Application and documentary evidence via registered mail to the last address he had for the Tenant. He provided Canada Post tracking numbers in this regard. The Landlord said he sent three packages with these documents to the Tenant, one on March 27, 2019, and two on April 8, 2019. As a result, I find that the Tenant was deemed served with the Application and documentary

evidence on April 1, 2019, and April 13, 2019, respectively, pursuant to section 90 of the Act.

The Landlord submitted an Amendment to the Application on May 7, 2019, to change his monetary claim from \$2,030.00 to \$6,898.51. However, the Landlord did not submit evidence that he served this Amendment on the Tenant pursuant to Rule 3.5. Further, the Landlord would not have been able to comply with Rule 4.6, which requires that a respondent must receive the amended application and supporting evidence not less than 14 days before the hearing. If the Landlord had sent the Amendment to the Tenant by registered mail on May 8, 2019, it would have been deemed received by the Tenant on May 13, 2019, or eight days prior to the hearing, which is not compliant with Rule 4.6. Accordingly, I dismiss the Landlord's amended application with leave to reapply.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the cost of the Application filing fee?

Background and Evidence

The Landlord testified that the tenancy originally began on January 1, 2015. However, when the Tenant's co-tenant(s) moved out in the years to follow, the Landlord and the Tenant entered a new fixed-term tenancy agreement on February 28, 2018, running to February 28, 2019. This tenancy had a monthly rent of \$2,030.00, due on the first day of each month. The Landlord said that the Tenant paid a security deposit of \$900.00 and no pet damage deposit.

The Landlord said that he received one month's rent from the Tenant in January 2019. He said he, therefore, is seeking one month's unpaid rent for February 2019, as compensation.

Analysis

Section 26 of the Act says that "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Based on the evidence before me overall, and on a balance of probabilities, I award the Landlord with \$2,030.00 or the equivalent of one month's rent from the Tenant for February 2019, pursuant to section 67 of the Act. Given that the Landlord is successful in this claim, I also award the Landlord recovery of the \$100.00 filing fee for this Application. I authorize the Landlord to retain the Tenant's \$900.00 security deposit as partial recovery of this award. I, therefore, award the Landlord a monetary order of \$1,230.00 for the remainder.

Conclusion

The Landlord's claim for compensation for one month's unpaid rent against the Tenant is successful. The Landlord is also successful in his claim for recovery of the \$100.00 Application filing fee.

The Landlord has established a monetary claim of \$2,130.00. I authorize the Landlord to retain the Tenant's full security deposit of \$900.00 in partial satisfaction of the claim. The Landlord has been granted a monetary order under section 67 for the balance due by the Tenant to the Landlord in the amount of **\$1,230.00**.

This order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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 17, 2019

Residential Tenancy Branch