



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* (“Act”) by the Parties.

The Tenant filed a claim for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid rent dated June 2, 2019 (“10 Day Notice”); and
- Recovery of the \$100.00 Application filing fee.

The Landlord filed a claim for:

- An Order of Possession of the rental unit, further to having served the Tenant with the 10 Day Notice;
- A monetary order for \$1,300.00 of unpaid rent for June 2019; and
- Recovery of the \$100.00 Application filing fee.

Introduction

An agent for the Landlord, F.B., appeared at the teleconference and gave affirmed testimony (the “Agent”). No one attended for the Tenant. The teleconference phone line remained open for over 10 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she was ready to proceed. I reviewed file records, which confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I gave the Agent an opportunity to ask questions about the hearing process and the opportunity to provide her evidence orally and respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

The Agent provided her email address at the outset of the hearing, and the Tenant provided her email address in her Application. The Agent confirmed her understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

The Agent said that the Tenant vacated the rental unit on June 30, 2019, so the Agent was no longer looking for an order of possession. Given this, and the fact that no one appeared on the Tenant's behalf, I dismiss the Tenant's application without 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 \$100.00 Application filing fee?

Background and Evidence

The Agent testified that there is a new owner of the residential property, and that he formed a new tenancy with the Tenant, which began on May 1, 2019. The Agent said the monthly rent was \$1,300.00, due on the first day of each month, and that the Tenant had paid a security deposit of \$600.00, and no pet damage deposit.

The Landlord said that the Tenant did not pay rent in June 2019, which led the Agent to serve the Tenant with the 10 Day Notice by putting it in her mailbox on June 2, 2019. The 10 Day Notice was signed and dated, had the rental unit address, and gave an effective date of June 12, 2019, which is automatically corrected to June 15, 2019, pursuant to section 64(3) of the Act. The 10 Day Notice also provided the reason for ending the tenancy as the Tenant having failed to pay \$1,300.00 that was due on June 1, 2019. The 10 Day Notice was in the approved form.

In the Application, the Agent said:

This tenant has constantly been in rental arrears. [The Tenant] texted me May 31st at 10:30pm of why she couldn't pay her rent on June 1st. She then thought she was texting her friend with her 'plan' to not pay rent & buy time to remain in

the rental. She got a surprise when she realized she was texting me with her plan & not her friend.... I have copied [the Tenant's] texts....

[reproduced as written]

Analysis

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

Section 26 of the Act states: "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 monthly rent due to the Landlord.

I find that the Tenant did not pay any rent due to the Landlord for June 2019. I find that the Landlord has established a monetary claim of \$1,300.00, in unpaid rent for June 2019. I further award the Landlord recovery of the \$100.00 Application filing fee, and I grant the Landlord a monetary order for a total of \$1,400.00.

Pursuant to section 72 of the Act, I order that the Landlord retain the deposit of \$600.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$800.00.

Conclusion

Under section 72 of the Act, I allow the Landlord to retain the security deposit in the amount of \$600.00. The Landlord's claim for compensation from the Tenant for unpaid rent in the amount of \$1,300.00 is successful. The Landlord is also awarded recovery of the \$100.00 filing fee for this Application from the Tenant.

After setting off the security deposit, I grant the Landlord a monetary order under section 67 of the Act from the Tenant in the amount of **\$800.00**.

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: July 23, 2019

Residential Tenancy Branch