



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR MNR FF
 Tenants: CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on July 30, 2019.

The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- cancel the 10 Day Notice to End Tenancy for Unpaid rent or utilities (the Notice);

The Landlord applied for the following relief:

- an order of possession based the Notice; and,
- a monetary order for unpaid rent or utilities.

The Landlord attended the hearing and provided testimony. However, the Tenants did not attend. The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that he no longer requires an order of possession because the Tenants moved out, without proper notice on July 5, 2019. I have amended the Landlord’s application to reflect this. The Landlord testified that he served the Tenants with his Notice of Hearing, and evidence on June 20, 2019, in person. I am satisfied that the Tenants were served the package on this day.

The Tenant did not appear at this hearing. As such, I dismiss the Tenants' application in its entirety, without leave to reapply. I note that the Landlord does not require an order of possession, pursuant to section 55 of the Act.

The Landlord filed an amendment with our office on July 8, 2019, to claim for damages left behind by the Tenants. However, he stated that the Tenants had already left by that time, and he had no way to serve the amendment on them. As discussed during the hearing, since the Landlord failed to serve the amendment on the Tenants, I will not consider it as part of this application. The only remaining issue in this application is the Landlord's request to recover unpaid rent.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord testified that rent in the amount of \$1,400.00 is due on the first of each month. The Landlord stated that the Tenants did not pay May 2019 rent on time, or in full, and only paid \$400.00 on May 16, 2019, leaving \$1,000.00 owing for that month. Further, the Tenants did not pay any rent for June or July 2019.

The Landlord stated that he served the Notice to the Tenants, in person, on June 4, 2019. The Landlord stated the Tenants never gave any written notice that they would be leaving or where they would be moving to. The Landlord stated that they moved, without written notice, on July 5, 2019, but they left behind furniture, some damage, and a substantial mess, which he had to clean up and deal with. The Landlord stated he was unable to re-rent the unit for July because they left mid-month and left a mess.

Analysis

Based on the unchallenged testimony and documentary evidence, and on a balance of probabilities, I find as follows:

I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I hereby amend the Landlord's application accordingly, and allow him to recover the rent that accrued since he filed his application.

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I find there is insufficient evidence the Tenant had any right under the *Act* to withhold rent. With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from the Landlord's documentary evidence and testimony before me to demonstrate that the Tenants owe and have failed to pay \$1,000.00 in rent for May, \$1,400.00 for June, and \$1,400.00 for July, totalling \$3,800.00. I award the Landlord the full month rent for July 2019, because the Tenants did not give proper notice that they would be leaving, and they also left damage and debris for the Landlord to deal with, which impacted his ability to re-rent for July.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I order the Tenants to repay the \$100.

In summary, I find the Landlord is entitled to a monetary order in the amount of \$3,900.00

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$3,900.00**. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: July 30, 2019