



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL; CNR, LRE

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 6, 2019 ("10 Day Notice"), pursuant to section 46; and
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70.

The two tenants did not attend this hearing, which lasted approximately 16 minutes. The landlord and his agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his agent, who is his son, had permission to speak on his behalf at this hearing.

The landlord's agent testified that the tenants were personally served with the landlord's application for dispute resolution and notice of hearing on June 21, 2019, the landlord's evidence package on July 15, 2019, and the landlord's amendment increasing his monetary claim to \$2,400.00 on July 22, 2019. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were personally served with the landlord's application and notice of hearing on June 21, 2019, evidence package on July 15, 2019, and amendment on July 22, 2019.

At the outset of the hearing, the landlord's agent stated that the landlord wanted to recover unpaid utilities of \$161.00. I notified the landlord's agent that the landlord did not apply for unpaid utilities in his application, nor did he mention this in his amendment or monetary order worksheet, so the tenants did not have notice of this claim. I informed the landlord's agent that the landlord could file a new application, pay a new filing fee, and serve the tenants, if the landlord wished to pursue this relief in the future.

The landlord's agent confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the Residential Tenancy Branch *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenants, I order the tenants' entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

During the hearing, the landlord confirmed that the tenants had vacated the rental unit on August 1, 2019 and he did not require an order of possession. Therefore, this portion of the landlord's application is dismissed without leave to reapply.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee paid for his application?

Background and Evidence

The landlord's agent testified regarding the following facts. This tenancy began on July 15, 2018 and ended on August 1, 2019. Monthly rent in the amount of \$1,600.00 was payable on the first day of each month. A security deposit of \$800.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The landlord seeks a monetary order of \$1,600.00 for unpaid rent for July 2019, plus the \$100.00 filing fee paid for his application.

The landlord's agent testified that the tenants did not pay any rent to the landlord for July 2019, so the \$1,600.00 was still outstanding. The landlord's agent claimed that the tenants allowed the landlord to use their \$800.00 security deposit towards the outstanding rent.

Analysis

The landlord provided undisputed evidence, as the tenants did not attend this hearing.

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which is the first day of each month in this case. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$1,600.00 for July 2019. Therefore, I find that the landlord is entitled to a monetary order of \$1,600.00 in unpaid rent from the tenants.

The landlord continues to hold the tenants' security deposit of \$800.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' entire security deposit of \$800.00 in partial satisfaction of the monetary award.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 application filing fee from the tenants.

Conclusion

I order the landlord to retain the tenants' entire security deposit of \$800.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$900.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's application is dismissed without leave to reapply.

The tenants' entire 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: August 08, 2019

Residential Tenancy Branch