



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR-DR

Introduction

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

- an Order of Possession pursuant to section 55.

The landlord originally applied for an order of possession through the Direct Request Process and was successful. The tenants filed a Review Consideration Application and were successful in having this hearing scheduled. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by legal counsel. Both parties confirmed that they had exchanged their documentary evidence.

Issue(s) to be Decided

Should the original decision and order be confirmed, varied, or set aside?

Background and Evidence

The landlord gave the following testimony. The tenancy began on or about July 1, 2018. Rent in the amount of \$1500.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$750.00. The tenant failed to pay rent in the month(s) of June 2019 and June 3, 2019 the landlord served the tenant with a notice to end tenancy by posting the notice on the door. The tenant further failed to pay rent in the month(s) of July and August 2019. The landlord testified that the tenants never made an attempt to pay the rent for the last three months. Counsel for the landlord submits that the tenants could

have easily provided printouts of e- transfer payments or attempted payments but chose not to do so.

The tenants gave the following testimony. SS testified that she made attempts to pay the rent but was turned away by the landlord. TK testified that when he attempted to pay the landlord told him to “just move out”. Both tenants testified that they had to dispose of their own garbage for an entire year. The tenants felt that the lack of garbage service and poor treatment they received from the landlord should fairly offset the \$4500.00 in unpaid rent.

Analysis

The landlord testified that the tenant has not paid the rent for the last three months nor have any attempts been made. Section 26 of the Act addresses the issue before me as follows:

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.*

The tenants acknowledged and confirmed that they had not paid the rent but felt justified for doing so because of lack of garbage service and the treatment they received from the landlord. In addition, the tenants testified that they had made attempts to pay the rent by e-transfer for the months of June, July and August 2019, but, they did not provide documentation to support that. Based on all of the above, I find that the original decision and order is confirmed and that the Order of Possession issued on June 14, 2019 is of full effect and force. The tenancy is terminated.

Conclusion

The original decision and Order of Possession dated June 14, 2019 is confirmed. The tenancy is terminated.

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 15, 2019

Residential Tenancy Branch