



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Landlord applied for an order of possession, for recovery of unpaid rent of \$1,445.00, further to having served a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"), and for recovery of the cost of his \$100.00 filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony, but no one attended on behalf of the Tenants. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

As the Tenants did not attend, I considered the Landlord's service of the Application, Notice of Dispute Resolution Hearing and documentary evidence on the Tenants. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and the Notice of Hearing. The Landlord testified that he served each Tenant with these documents by Canada Post registered mail on July 15, 2019. The Landlord provided Canada Post tracking numbers as evidence of service. I find that the Tenants were deemed served with the Application, Notice of Hearing, and documentary evidenced on July 20, 2019 in accordance with the Act.

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 answer my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") 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 the Parties' email addresses at the outset of the hearing and confirmed his understanding that the Decision would be emailed to all Parties, and any Orders would be sent to the appropriate Party.

Issue(s) to be Decided

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

Background and Evidence

The Landlord confirmed the following information about the tenancy, the details of which were contained in the tenancy agreement he submitted into evidence. The Landlord confirmed that the periodic tenancy began on December 24, 2016, with a monthly rent of \$2,000.00, due on the first day of each month. The Landlord said the Tenants paid a security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00. The Landlord said that by the end of the tenancy the monthly rent owing had risen to \$2,200.00.

The Landlord said that the Tenants paid \$755.00 in June 2019 on \$2,200.00 rent owing, but did not pay any rent for July or August 2019; therefore, the Landlord said the Tenants now owe him \$5,845.00

The Landlord said the Tenant, S.H., was subletting the rental unit to different people without asking the Landlord's permission, which permission the Landlord said he would not have given. He said he told the Tenant to stop this practice and to pay her rent.

The Landlord said he issued the Tenants a 10 Day Notice that was dated and served on June 22, 2019. The Landlord said he served the 10 Day Notice by handing it to the brother of Tenant, Z.B., who the Landlord said was a working adult, living with the Tenants. The Landlord submitted a copy of the 10 Day Notice, which contains the Landlord's signature, the date, the rental unit address, the grounds for the eviction notice, the effective date of July 2, 2019, and is in the approved form. The 10 Day Notice does not indicate how it was served, but the Landlord submitted another copy of a 10 Day Notice containing the same information, but also stating that the Landlord served it on the Tenant, Z.B.'s, brother, Z.B. ("Brother"). The Landlord submitted this document and a copy of a form that the Brother signed acknowledging receipt of the 10 Day Notice.

Analysis

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

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

. . .

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

[emphasis added]

The undisputed evidence before me is that the Tenants did not pay full rent for June 2019, and did not pay any rent for July and August 2019, although they continued to live in the rental unit until August 31, 2019. Further, the Tenants did not apply for dispute resolution to cancel the 10 Day Notice. As such, according to section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and they should have vacated the rental unit by that date.

I reviewed all relevant documentary evidence and oral testimony before me, and pursuant to sections 88 and 90 of the Act, I find that the Tenants were deemed served with the 10 Day Notice on June 22, 2019, when it was delivered in person.

Section 26 of the Act states 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 the Act to deduct all or a portion of the rent.

Pursuant to Rule 4.2 and section 64(3) (c) of the Act, I amend the Application for dispute resolution to correct the amount of the Monetary Order sought, reflecting the ongoing failure of the Tenants to pay their monthly rent owing. I find no prejudice to the Tenants, as they are aware of how much rent they have or have not paid, so they could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, I find it reasonable to amend the amount of the Monetary Order sought by the Landlord from the Tenants from \$1,445.00 to \$5,845.00

The 10 Day Notice was signed, dated, had the rental unit address, the grounds, and the effective vacancy date of July 2, 2019. I find that the 10 Day Notice is in the approved form and is valid as to form and content, pursuant to section 52 of the Act.

The Tenants did not attend the hearing to provide testimony as to why the rent was not paid, and they did not provide any documentary evidence establishing that they had a right under the Act to deduct all or a portion of the rent owed for the three months prior to vacating the rental unit at the end of August 2019. As the Tenants have now vacated the rental unit, the Landlord said he no longer needs an order of possession.

I find that the Tenants have not established that they had a right to withhold rent from June 2019 through to and including August 2019. Accordingly, and pursuant to section 67 of the Act, I award the Landlord with recovery of \$5,845.00 in unpaid rent from the Tenants. Since the Landlord was successful in this Application, I also award him recovery of the \$100.00 Application filing fee.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security and pet damage deposits of \$2,000.00 in partial satisfaction of the Landlord's monetary claim. I therefore authorize the Landlord to keep the security and pet damage deposits, and I grant the Landlord a Monetary Order of **\$3,945.00** against the Tenant for the outstanding amount owing.

Conclusion

The Tenants did not pay the Landlord full rent for June 2019, and they paid him no rent for July and August 2019, despite living in the rental unit until the end of August 2019. I found that the Tenants owe the Landlord \$5,845.00 in outstanding rent and I awarded

the Landlord with a Monetary Order against the Tenants. I also awarded the Landlord recovery of his \$100.00 Application filing fee.

After deducting the Tenants' \$2,000.00 security and pet damage deposits, which the Landlord is authorized to keep, I award the Landlord with a Monetary Order of **\$3,945.00**. This Order must be served on the Tenants 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: September 11, 2019

Residential Tenancy Branch