



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, MNRT, OLC
 OPUM-DR, FFL

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “*Act*”). The Tenants applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), to restrict or suspend the Landlords’ right to enter, for monetary compensation for the cost of emergency repairs, and for an Order for the Landlords to comply with the *Act*, *Regulation* and/or tenancy agreement. The Landlords applied for an Order of Possession based on the 10 Day Notice, for monetary compensation for unpaid rent and/or utilities, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlords initially applied through the Direct Request process. Their application was joined to be heard with the Tenants’ application through a participatory hearing.

One of the Landlords called into the hearing while no one called in for the Tenants during the approximately 20 minutes that the phone line was monitored. The Landlord was affirmed to be truthful in her testimony and stated that she served the Tenants in person as well as by mail with the Notice of Dispute Resolution Proceeding package and a copy of their evidence. The Landlord also confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the Tenants’ application and a copy of their evidence.

I accept the testimony of the Landlord and find that the Tenants were served in accordance with Sections 88 and 89 of the *Act*. I also find that the Tenants would have been aware of the hearing date and time as it was also scheduled based on their application. As such, given that the Tenants did not attend the hearing, I dismiss the

Tenants' Application for Dispute Resolution without leave to reapply. This decision will address the Landlords' application only.

Preliminary Matters

The Landlord testified that the Tenants moved out on September 2, 2019 and that they have possession of the rental unit back. Therefore, the Landlord confirmed that they are no longer seeking an Order of Possession. Pursuant to Section 64(3)(c) of the *Act*, I amend the application to remove the Landlords' claim for an Order of Possession. This decision will address the Landlords' monetary claim and request for the recovery of the filing fee.

Issues to be Decided

Are the Landlords entitled to a Monetary Order for unpaid rent and/or utilities?

Should the Landlords be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony, not all details of the submissions are reproduced here.

The Landlord provided undisputed testimony regarding the tenancy which was confirmed by the tenancy agreement submitted into evidence. The tenancy began on December 1, 2018. Rent in the amount of \$2,000.00 was due on the first day of each month. The Tenants paid a security deposit of \$1,000.00 at the start of the tenancy. The Landlord stated that the Tenants moved out on September 2, 2019.

The Landlord testified that the Tenants were served with a 10 Day Notice in person on July 4, 2019. A copy of the 10 Day Notice was submitted into evidence and states that \$2,000.00 was unpaid as due on July 1, 2019.

The Landlords applied for compensation for unpaid rent in the amount of \$2,000.00 as well as compensation for an unpaid utility bill in the amount of \$258.79.

However, the Landlord stated that they are owed approximately \$9,000.00 in unpaid rent. She stated that the Tenants were behind in rent and agreed to pay \$2,500.00 to

catch up, however the Tenants would provide cheques that were returned as non-sufficient funds. The Landlord provided copies of two cheques that were returned from the bank after being provided by the Tenant. Both cheques were dated April 1, 2019, one in the amount of \$500.00 and the other in the amount of \$2,000.00.

The Landlords submitted a Direct Request Worksheet stating that they are seeking \$2,500.00 for July 1, 2019. She also stated that rent for August 2019 was not paid.

Regarding the utility bill, the Landlord stated that they are owed \$258.79 for an unpaid water and sewer bill from the city. A copy of the bill was submitted into evidence dated April 30, 2019 in the amount of \$258.79. The Landlord also submitted a letter provided to the Tenants on June 4, 2019 in which they request payment for the utility bill. The Landlord stated that the Tenants were provided with a copy of the bill.

The tenancy agreement notes that water is included in the rent but does not state that sewer costs are included. The Landlord stated that water was checked off on the tenancy agreement, but it was discussed with the Tenants that they were responsible for the water bill. The Landlord also stated that the Tenants paid previous water bills.

Analysis

As stated in Section 26 of the *Act*, a tenant must pay rent when due as per the tenancy agreement. I accept the testimony of the Landlord as well as the tenancy agreement and find that rent in the amount of \$2,000.00 was due on the first day of each month.

I also accept that the Tenants were served with a 10 Day Notice on July 4, 2019 stating that \$2,000.00 was unpaid as due on July 1, 2019. I find that the Tenants received the 10 Day Notice given their application to dispute the notice. Despite testimony that rent is owing in the amount of \$9,000.00 beginning in April 2019, the Landlords filed the Application for Dispute Resolution seeking \$2,000.00. I also note that the testimony provided regarding how much rent was owing in previous months was unclear.

However, as stated by rule 2.2 of the *Residential Tenancy Branch Rules of Procedure*, the claim is restricted to what is stated on the application. As such, I find that the Landlords did not file an application seeking unpaid rent prior to July 2019 and only applied for unpaid rent in the amount of \$2,000.00. Therefore I decline to make a finding on whether previous rent is owing. The Landlords are at liberty to file a new application should they decide to claim additional unpaid rent.

I will consider whether the Landlords are entitled to unpaid rent for July 2019 as claimed on their application. I also find it reasonable that the Landlords would be seeking an additional month of unpaid rent that occurred while waiting for the scheduled hearing. I accept the testimony of the Landlord that they did not receive any rent for August 2019 and find that the Tenants were aware that rent was due on August 1, 2019 as per the tenancy agreement. Therefore, I award the Landlords \$2,000.00 for July 2019 rent and \$2,000.00 for August 2019 rent.

Regarding the unpaid utilities, I find that the tenancy agreement indicates that water is included in the rent. Although the Landlord testified that this was an error and the Tenants were aware they were responsible for water costs, I do not find sufficient evidence to support this claim. As such, I decline to award compensation for the utility bill regarding water costs as I am not satisfied that the Landlords established that the Tenants were responsible for this bill.

However, as the utility bill is also for sewer costs and the tenancy agreement does not indicate that sewer costs were included in the rent, I find that the Landlords are entitled to compensation for these costs as stated on the bill. The bill dated April 30, 2019 outlines sewer costs in the amount of \$113.86 and I therefore award this amount to the Landlords.

As I find that the Landlords' application had merit, pursuant to Section 72 of the *Act* I award the recovery of the filing fee in the amount of \$100.00.

The Landlords may retain the security deposit towards compensation owed and are therefore awarded a Monetary Order in the amount outlined below:

July 2019 rent	\$2,000.00
August 2019 rent	\$2,000.00
Utility bill – sewer costs	\$113.86
Recovery of filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$1,000.00)</i>
Total owing to Landlords	\$3,213.86

Conclusion

The Tenants' Application for Dispute Resolution is dismissed, without leave to reapply.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a **Monetary Order** in the amount of **\$3,213.86** as outlined above. The Landlords are provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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.

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: September 16, 2019

Residential Tenancy Branch