



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on September 24, 2019. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- to recover the filing fee from the tenant for the cost of this application.

The landlords attended the hearing with their counsel. The tenant also attended the hearing. The Landlords provided registered mail tracking information to show they sent their Notice of Hearing and evidence all in one package to the Tenant at her place of residence. This package was mailed on August 29, 2019. The Landlord also emailed a courtesy copy of this package which the Tenant acknowledged getting. The Tenant stated she never got the registered mail. Although the Tenant claims she never got the registered mail package, I find the Tenant is deemed served with this package 5 days after it was mailed, on September 3, 2019, pursuant to section 89 and 90 of the Act. The Tenant was also present and was willing and able to speak to the issues. Ultimately, I find the Landlord sufficiently served the Tenant with their package.

The Tenant did not provide any documentary evidence, and only provided testimony.

Preliminary Matters

The parties both acknowledged that they had a hearing on September 6, 2019, where an order of possession was issued based upon the same 10 Day Notice that was being used to request an order of possession in this hearing.

I explained to the parties that I cannot re-hear, change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim. Given an order of possession has already been issued off of this 10 Day Notice, I dismiss this portion of the Landlord's application, in full, without leave to reapply.

Further, the Tenant was not happy with the outcome of that hearing, and stated she applied for a review consideration, as well as a Judicial Review of the Order of Possession. The Tenant did not have any file numbers or corroborating information to support that she filed any of these reviews. There is insufficient evidence to show that her application for Judicial Review of her previous hearing would substantially overlap with the issues I must decide in this hearing. Although the payment of rent is a factor in both hearings, the order of possession is largely linked to the service of the 10 Day Notice, and the timing of subsequent applications and payments. This hearing is purely about what the Tenant still owes the Landlord in unpaid rent, irrespective of service timelines of Notices and timing of payments. In any event, I find there is insufficient evidence to show that the matters are substantially linked, and I allow this hearing to proceed.

Both parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issues to be Decided

1. Is the landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

Both parties agree that monthly rent is \$4,500.00, and is due on the first of the month. The Landlord confirmed that they still hold a security deposit in the amount of \$2,250.00.

The Landlord stated that the Tenant still owes \$1,500.00 from June 2019, and has not paid any amount for July, August, or September 2019, bringing the total unpaid rent up to \$15,000.00 (up until the end of September).

The Tenant acknowledged that she owes this amount and stated she would pay the Landlord right away if they would allow her to stay living there (but they want her to move out). The Tenant stated she has tried to pay but the Landlord has been playing games. The Tenant stated that the Landlord is racist.

The Landlords stated that their relationship has soured to the point of no return and they want the tenancy to end.

Analysis

In this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

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

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.

With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from the landlord's undisputed documentary evidence and testimony before me to demonstrate that the tenant owes and has failed to pay \$15,000.00 in rent. The Tenant believes the Landlord is playing games and may be a racist, but she does not refute that she owes this amount.

I find the landlord is entitled to a monetary order for this amount.

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 substantially successful in this hearing, I order the tenant to repay the \$100. Also, Section 72 of the *Act* allow me to authorize that the security deposit, currently held by the Landlords, be kept and used to offset the amount of rent still owed by the Tenant.

In summary, I grant the monetary order based on the following:

Claim	Amount
Unpaid rent: June-September of 2019	\$15,000.00
PLUS:	
Filing fee	\$100.00
LESS: Security Deposit	\$2,250.00
TOTAL:	\$12,850.00

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$12,850.00**. This order must be served on the tenant. If the tenant fails 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: September 24, 2019

Residential Tenancy Branch