



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNRL-S**

Introduction

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

- Authorization to recover the filing fees from the tenants pursuant to section 72 and
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67.

The tenants did not attend this hearing although I left the teleconference hearing connection open until 1:42 P.M. to enable the tenants to call into this hearing scheduled for 1:30 P.M. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord I were the only ones who had called into this teleconference.

The landlord testified that on July 9, 2019, she sent the Application for Dispute Resolution Proceedings Package to the tenant KB by registered mail to the forwarding address provided to her by KB by text message. She did not provide a copy of the text message as evidence. She sent the Application for Dispute Resolution Proceedings Package to the tenant AL at the same address by registered mail because she believes the two tenants continue to live together. The landlord acknowledged this belief is an assumption she made based on the history of the tenants. The tracking numbers are listed on the cover page of this decision.

Preliminary Issue

The tenancy agreement provided as evidence by the landlord indicates the tenants named are as reflected on the cover page of this decision. The landlord commenced the Application for Dispute Resolution against a differently named tenant. In accordance with Rule 4.2 of the Residential Tenancy Branch Rules of Procedure, I allowed the landlord to amend her Application for Dispute Resolution to reflect the parties as listed on the tenancy agreement.

Issue(s) to be Decided

Is the landlord entitled to the monetary order sought?

Background and Evidence

The landlord provided a copy of the tenancy agreement as evidence. The month to month tenancy began on June 1, 2018 with rent set at \$1,650.00. A security deposit of \$825.00 was collected and the landlord continues to hold it. No pet damage deposit was taken. No condition inspection report was done at the commencement of the tenancy.

The landlord testified that the tenants were frequently late with rent. During testimony, the landlord initially testified that it was a few days into June when the tenant KB returned home from an extended absence, late with rent. At this time during the landlord's testimony, I advised the landlord that she indicated on her application that the tenancy ended on April 30th. The landlord then testified the tenants were probably '*stringing her along for April*' in promising to pay rent then not following through.

The landlord then testified the tenants probably failed to pay for the month of May and she was unable to rent the unit out in June because it was in an unrentable condition. During this time, she had a different rental unit someplace else that she was having problems with and she testified she doesn't remember exactly the dates and times of what was happening with this rental unit.

The landlord testified she was not given a formal one month notice to end tenancy by the tenants and she discovered it was ending by phone conversation and by text messages. The landlord did not provide copies of the text messages as evidence. Her son was living in an adjacent rental unit and he is the one who advised that he heard the noise of someone moving. When she called the tenant KB to find out what was going on, KB advised her that he just arrived home to find the co-tenant AL moving out. The landlord could not provide dates and times for any of the conversations and did not provide any text messages as evidence.

The landlord testified she put the house up for sale subsequent to the tenants moving out. She was not able to re-rent it and the property sold on October 1, 2019. The landlord is seeking rent for the month of May because she was not provided with a one month notice to end the tenancy and for the month of June because she was not able to rent it out for that month. The landlord provided a schedule of e-transfers received from the tenant AL however she did not provide testimony as to what this represents in relation to what she claims is owing by the tenants for unpaid rent. No monetary order worksheet was entered into evidence by the landlord.

Analysis

- Service

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- a. by leaving a copy with the person;*
- b. if the person is a landlord, by leaving a copy with an agent of the landlord;*
- c. by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- d. if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- e. as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

The Residential Tenancy Branch Policy Guideline PG-12 provides guidance regarding service of document provisions in the *Act*. The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them. Failure to prove service may result in the matter being dismissed, with or without leave to reapply.

In the case before me, the landlord testified she gave the tenant KB his notice at the address provided in a text message. The text message was not provided as evidence by the landlord. Further, the landlord testified the tenant KB and the tenant AL were not always living in the same home as one was sometimes incarcerated and the other one attempted to move out without advising the co-tenant. The landlord testified she assumed the tenants had moved out together but admitted she had no evidence of this.

- Sufficiency of Evidence

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove 1.) the existence of the damage/loss, 2.) that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, 3.) the claimant must then provide evidence to verify the actual monetary amount of the loss or damage. The claimant must also show 4.) what steps were taken, if any, to mitigate the damage or loss.

Rule 3.7 of the Residential Tenancy Branch Rules of Procedure state that evidence must be organized, clear and legible. During this hearing, the landlord provided confusing, unclear and unsubstantiated evidence as to when or if the tenants gave notice, when rent was due and not paid, and specifically why she believed she was entitled to compensation. In her application, the landlord seeks two months rent at \$1,650.00 for each month but does not elaborate on why she is entitled to it or for which months she wants compensation.

When asked for dates and times of incidents during her testimony, each incident was prefaced with either 'I think' or 'probably' or 'I believe'. No specific timelines were offered for the events leading up to this claim. I find it especially troubling that the landlord began to give testimony of frequent late rent in June 2019 and was at a loss to explain why she would testify as such when her application shows the tenancy ended on April 30th. It was only after I had pointed out the end date for the tenancy that the landlord advised she seeks the 2 months compensation for May and June.

When an applicant provides confusing, contradictory or misleading evidence, it is not the role of the arbitrator to reconcile the evidence, only to determine whether the applicant has provided sufficient clear evidence to establish their claim. In this case, I am not satisfied that the applicant has provided sufficient evidence to establish her claim because her evidence was convoluted and confusing. The landlord has not succeeded in proving on a balance of probabilities that she is entitled to compensation.

Conclusion

The landlord has not satisfied me the tenants were served with the Application for Dispute Resolution in accordance with section 89 of the *Act*. Further, the landlord has presented insufficient evidence to prove she is entitled to compensation in accordance with section 67 of the *Act*. For these reasons, I dismiss the landlord's claim 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: October 13, 2019

Residential Tenancy Branch