



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant and the male landlord did not attend this hearing, which lasted approximately 31 minutes. The female landlord ("landlord") and her two advocates attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had permission to represent the male landlord at this hearing (collectively "landlords"). The landlord stated that her two advocates, "landlords' advocate" and "landlords' advocate supervisor," had permission to represent the landlords at this hearing.

The landlords' advocate testified that the tenant was served with the landlords' application for dispute resolution hearing package and first amendment on August 8, 2019, by way of registered mail to the rental unit where the tenant is residing. He provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on August 13, 2019, five days after its registered mailing.

The landlords' advocate testified that the tenant was served with the landlords' second amendment increasing the monetary claim, on September 12, 2019, by way of posting

to the tenant's rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' second amendment on September 15, 2019, three days after its posting.

The landlord testified that she posted the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 19, 2019, ("10 Day Notice"), to the tenant's rental unit door on the same date and the male landlord witnessed it. The landlord provided a signed, witnessed proof of service with this application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' 10 Day Notice on July 22, 2019, three days after its posting.

Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on April 1, 2016 for a fixed term ending on September 30, 2016, after which it became a month-to-month tenancy. A security deposit of \$900.00 was paid by the tenant and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The landlords issued the 10 Day Notice, which has an effective move-out date of August 1, 2019, indicating that rent in the amount of \$5,473.47 was due on July 3, 2019. The landlords provided a copy of the notice. The landlords' advocate was calculating the amounts owing during the hearing. The landlord confirmed that unpaid rent and utilities were added together in the unpaid rent section of the 10 Day Notice as well as the monetary order. The landlords provided balance sheets showing unpaid rent and utilities dating back to December 2018, but not prior to this date, despite a balance owing at that time.

The landlords seek an order of possession based on the 10 Day Notice. They seek a monetary order of \$9,217.97, which includes the rent and utilities. They also seek to recover the \$100.00 application filing fee.

Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which the landlord said was the first day of each month. Section 46 of the *Act* states that the landlords may only issue a 10 Day Notice for any day after the rent is due.

When I asked the landlord how she arrived at the amount in the 10 Day Notice of \$5,473.47, she did not know. I find that the landlords were unable to provide an exact breakdown for the unpaid rent and for which months the rent was owing, since it was calculated together with the unpaid utilities.

Therefore, I find that the tenant did not have notice of the proper amount of rent due. The 10 Day Notice provided the amount of \$5,473.47 due on July 3, 2019, which included both rent and utilities. I find that the tenant did not have an opportunity to pay the rent in order to cancel the notice because the rent information supplied by the landlords was incorrect. The amount of utilities was not provided separately in the designated section of the 10 Day Notice. No utility bills were provided with the landlords' application. No written 30-day demand notices were provided by the landlords, in order to include the utilities in the 10 Day Notice or in the monetary order. The landlords did not even apply for unpaid utilities, they only applied for unpaid rent in this application.

Accordingly, I find that the landlords are not entitled to an order of possession based on the 10 Day Notice, and I dismiss this application without leave to reapply. The landlords' 10 Day Notice, dated July 19, 2019, is cancelled and of no force or effect.

As the landlords failed to establish the proper amounts of rent and utilities due, I dismiss their application for a monetary order for unpaid rent, with leave to reapply.

As the landlords were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlords' application for a monetary order for unpaid rent is dismissed with leave to reapply.

The remainder of the landlords' application is dismissed without leave to reapply.

The landlords' 10 Day Notice, dated July 19, 2019, is cancelled and of no force or effect.

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 01, 2019

Residential Tenancy Branch