



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDL MNRL OPR

Introduction

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

The landlords attended the hearing. The landlords had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open for the duration of the hearing to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the tenant.

The landlords testified that they served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on August 14, 2019 and deemed received by the tenant five days later, on August 19, 2019, under section 90 of the *Act*. The landlords provided the Canada Post tracking number in support of service referenced on the first page of the decision. Based on the undisputed testimony of the landlords, I find the landlords served the tenant with the documents pursuant to section 89 of the *Act*.

Preliminary Matter: Tenant Vacated Rental Unit

At the outset of the hearing the landlord testified the tenant moved out of the rental unit on September 3, 2019 and the landlord no longer required an order of possession. I amended the landlord's application to exclude the order of possession in accordance with Rule 5 of the *Residential Tenancy Branch Rules of Procedure*.

Preliminary Matter: Landlord's Claim for Damages to the Rental Unit

The landlord filed an application for monetary damages for damage to the rental unit while the tenant was still residing in the property. As such, I find this application for compensation for damages to be premature. Accordingly, I dismiss the landlords' application for monetary damages for damage to the rental unit with leave to reapply.

Preliminary Matter: Landlord's Amendment

On September 17, 2019, the landlords filed an amendment to their application to seek a monetary award for damages to the rental unit. Rules 4.3 and 4.6 of the *Rules of Procedure* require that the landlord must demonstrate to my satisfaction that the tenant was served with the amendment as required by the *Act* and that it was received by the respondent not less than 14 days before the hearing. The landlords testified that they did not serve the amendment on the tenant as they did not have a forwarding address for the tenant. I find that the principles of natural justice would be breached if I were to hear any additional claims from the landlords which have not been served on the tenant. I find that the landlords' application was filed outside of the timelines in accordance with the Rules. I dismiss the landlord's amended application for a monetary order for damages with leave to reapply.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent pursuant to section 67?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The landlords testified that the monthly rent was \$1,650.00, payable on the first day of each month. The landlords testified that the tenant did not pay a security deposit.

The landlord testified that the tenant paid \$1,300.00 for rent in June 2019 and the tenant has not paid any rent since June 2019.

The landlords testified that they issued the Ten-Day Notice on July 15, 2019 with a stated move-out date of July 25, 2019. The landlords testified that the tenant vacated the rental unit on September 3, 2019.

Analysis

Pursuant to *Residential Tenancy Branch Rules of Procedure* ("RTB Rules"), Rule 6.6 states that the applicant, in this case the landlord, has the onus of proof to prove their case on a balance of probabilities. This means that RTB Rule 6.6 requires the landlord to prove that, more likely than not, the facts occurred as claimed in order to prevail in their claim.

Based upon the undisputed testimony of the landlord and the terms of tenancy agreement, I find that the Tenant was obligated to pay the monthly rent in the amount of \$1,650.00, on time and in full each month, up to and including the rental period commencing June 1, 2019. I find that the tenant has only made a partial payment of \$1,300.00 for June 2019 and no rent payments thereafter.

Further, section 7(1) of the *Act* states that "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." Pursuant to section 7(1), I find the landlord is entitled to a monetary award of \$350.00 for unpaid rent in June 2019 and \$1,650.00 for unpaid rent in July 2019.

I also find that the Tenant owes \$1,815.00 for overholding the rental unit for the period of August 1, 2019 to September 3, 2019, calculated as described below.

Section 57 of the *Act* defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In the case before me, as per the Ten-Day Notice; I find the tenancy ended on July 25, 2019. However, I am satisfied from the landlords' undisputed testimony that the tenant continued to overhold the rental unit up to September 3, 2019.

Residential Tenancy Policy Guideline #3 states that tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises.

As the tenants remained in the unit for the full rental periods of August 1, 2019 to August 31, 2019, the landlords are entitled to receive a total of \$1,650.00 for overholding that period. In addition, since the tenants remained in the rental unit from September 1, 2019 to September 3, 2019, I find that the landlords are entitled to overholding rent in the amount of \$165.00 (three days at the per diem rate of \$55.00) for September 2019.

In addition, since the landlord has been successful this matter, I award the landlords \$100.00 for recovery of the filing fee pursuant to section 72 of the *Act*.

Accordingly, I find that the landlords are entitled to a monetary order of \$3,915.00, calculated as follows.

<u>Item</u>	<u>Amount</u>
June rent unpaid	\$350.00
July rent unpaid	\$1,650.00
August 2019 overholding damages	\$1,650.00
September 2019 overholding damages	\$165.00
Filing fee	\$100.00
Total	\$3,915.00

Conclusion

I dismiss the landlords' application for a monetary order for damages with leave to reapply.

I grant the landlords a monetary order in the amount of **\$3,915.00**. If the tenant fails to comply with this order, the landlords may file the order in the Provincial Court to 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: October 09, 2019

Residential Tenancy Branch