



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 4, 2019 ("10 Day Notice"), for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the tenant's security deposit, and to recover the cost of the filing fee.

Landlord agent RK ("agent") attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide testimony and present documentary evidence. A summary of the evidence and testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding ("Notice of Hearing"), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on August 29, 2019. The registered mail tracking number has been included on the cover page of this decision for ease of reference. According to the Canada Post online registered mail tracking website, the tenant signed for and accepted the registered mail package on August 30, 2019. As the tenant did not attend the hearing, I find that this application is undisputed by the tenant. The hearing proceeded with the agent for the landlord only.

Preliminary and Procedural Matters

The agent testified that in addition to the rent owed for July and August of 2019 as claimed, the landlord subsequently suffered a loss of rent for September 2019 as the tenant failed to vacate the rental unit until September 1, 2019. As a result, the agent requested to amend their application to include loss of rent owed for September of 2019 of \$625.00. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be

aware or ought to be aware that rent is due pursuant to the tenancy agreement on September 1, 2019, and the tenant continued to reside in the rental unit on September 1, 2019. Therefore, I amend the application pursuant to section 64(3)(c) of the *Act*, to \$1,825.00, which consists of \$625.00 rent for July, August and September of 2019.

In addition, the agent provided the landlord's email address during the hearing and confirmed that the agent did not have an email address for the tenant. The agent confirmed their understanding that the decision would be emailed to the landlord and sent by regular mail to the tenant. Any resulting monetary order will be sent to the landlord only for service on the tenant. I note that an order of possession is no longer necessary as the agent confirmed that the landlord has possession of the rental unit again given that the tenant vacated since the application was filed.

Finally, the application was also amended to reflect that the agent RK is an agent for the landlord, which was amended pursuant to section 64(3) of the *Act*.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The month to month tenancy began on May 1, 2019. Monthly rent of \$625.00 was due on the first day of each month. The tenant paid a security deposit of \$312.50 at the start of the tenancy, which the landlord continues to hold. The tenant vacated the rental unit on September 1, 2019.

The landlord's amended monetary claim for \$1,875.00 is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid July 2019 rent	\$625.00
2. Loss of August 2019 rent	\$625.00
3. Loss of September 2019 rent	\$625.00
TOTAL	\$1,875.00

The agent testified that on July 4, 2019, the tenant was served with the 10 Day Notice by posting to the tenant's door. The amount listed as owing was \$625.00 due July 1, 2019. The agent stated the tenant did not pay rent for July, August or September 2019 and did not vacate the rental unit until September 1, 2019, even though rent was due the same day. The landlord did not find a new tenant for September 2019. The effective vacancy date listed on the 10 Day Notice was July 14, 2019.

The landlord is also seeking the recovery of the cost of the filing fee under the *Act*.

Analysis

Based on the undisputed documentary evidence and testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable. I also find the tenant breached section 45 of the *Act* which states in part:

Section 45 of the *Act* states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[Emphasis added]

I have reviewed the 10 Day Notice, and I find the effective vacancy date listed as July 14, 2019, automatically corrects under section 53 of the *Act* to July 17, 2019. This is due to section 90 of the *Act* which states that documents posted to the door are deemed served three days after they are posted, and in the matter before me, the 10 Day Notice was posted on July 4, 2019. I find the tenancy ended on July 17, 2019. The tenant was overholding in the rental unit until September 1, 2019, and therefore, I find the tenant owes July, August and September 2019 rent, which total \$1,875.00.

In addition, I find the landlord is entitled to the recovery of the cost of their filing fee of \$100.00, as their application was fully successful pursuant to section 72 of the *Act*. The landlord continues to hold the tenant's security deposit of \$312.50, which has not accrued any interest to date.

I authorize the landlord to retain the tenant's full security deposit of \$312.50 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$1,662.50**.

Conclusion

The landlord's application is fully successful.

The landlord has been authorized to retain the tenant's full security deposit of \$312.50 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$1,662.50. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision will be emailed to the landlord and sent by regular mail to the tenant. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 17, 2019

Residential Tenancy Branch