



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT LRE MNDCT OLC FFL OPRM-DR

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") pursuant to section 46;
- authorization to recover the filing fee for this application pursuant to section 72;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and,
- an order for the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

This hearing also 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; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord testified that the tenants did not serve their Notice of Hearing and Application for Dispute Resolution, evidence or their amendment. The tenant acknowledged receipt of the landlord's Notice of Hearing and Application for Dispute Resolution and evidence. I find that the tenants were served in accordance with the Act.

The tenants testified that they served the landlord with the Notice of Hearing and Application for Dispute Resolution and their evidence by registered mail sent on October 8, 2019 and deemed received by the landlord five days later, on October 13, 2018, under section 90 of the *Act*. The tenants provided the Canada Post tracking number in support of service referenced on the first page of the decision. In addition, the tenants testified that they served the landlord with their amendment on October 17, 2019. The tenants provided the Canada Post tracking number in support of service referenced on the first page of the decision.

Based on the testimony of the tenants, and the Canada Post tracking numbers, I find that the tenants served the landlord with their documents pursuant to section 89 of the *Act*.

Preliminary Matter: Admissibility of Tenant's Electric Utility Evidence

The tenants filed evidence of their electric utility evidence on the day of the hearing and the tenants did not have any proof of service these documents.

Residential Tenancy Branch Rules of Procedure, sections 3.3 states that the applicants' evidence must be received by the respondent and the Residential Tenancy Branch fourteen days before the hearing. I find that the applicants did not serve this evidence in accordance with the *Residential Tenancy Branch Rules of Procedure*. I find that the admission of this evidence without service upon the landlord would prejudice the landlord and result in a breach of the principles of natural justice. Accordingly, tenants' evidence is excluded pursuant to *Residential Tenancy Branch Rules of Procedure*, section 3.12.

Preliminary Matter: Joinder of applications

At the hearing both the landlord and the tenant requested that the landlord's application, which was scheduled for December 13, 2019, be advanced and be joined with the hearing of the tenant's application herein.

Residential Tenancy Branch Rules of Procedure, Rule 2.10 states the following regarding the joinder of applications:

Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:

- a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
- b) whether all applications name the same landlord;
- c) whether the remedies sought in each application are similar; or
- d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

In this matter, I find that both applications involve the same residential property, the same landlord, the remedies sought are similar, and similar issues of fact and law exist in both applications. Further, both parties consented to the joining of these applications. For the foregoing reasons, I exercise my discretion under Rule 2.10 to join both the landlord's application and the tenants' application and I shall hear both applications together herein. The file numbers of the joined applications are stated on the first page of this decision. Further, the hearing date for the landlord's application is vacated and advanced to today's date.

Preliminary Matter: Tenants Vacated the Property

The parties agreed that the tenant has vacated the rental unit prior to the hearing. As a result, the following applications made by the tenant are now moot:

- the tenants' application for cancellation of the landlord's Ten-Day Notice pursuant to section 46;
- the tenants' application for an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and,
- the tenants' application for an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Section 62(4)(b) of the *Act* states that an arbitrator may dismiss all or part of an application for dispute resolution which does not disclose a dispute that may be determined under the *Act*. I exercise my authority under section 62(4)(b) of the *Act* to dismiss these applications for dispute resolution.

Furthermore, the landlord's applications for an Order of Possession pursuant to section 55 is also moot. Accordingly, I also exercise my authority under section 62(4)(b) of the *Act* to dismiss the landlord's application for an Order of Possession.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

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

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The landlord and the tenants both provided tenancy agreements. However, the proffered tenancy agreements differ. The tenancy agreement provided by the landlord states that the tenants are responsible for the payment of utilities. The tenancy agreement provided by the tenants has that clause crossed out and there is a handwritten addendum stating the landlord is responsible for utilities.

Both tenancy agreements state that the rent is \$1,300.00 per month with a \$650.00 security deposit. The landlord testified that the tenants moved into the rental unit during the month of September 2019 and they paid \$650.00 for prorated rent in September 2019 and \$650.00 for the security deposit. The landlord testified that the tenants did not pay any additional money for rent.

The tenants testified that they paid the rent for October 2019 in full in September 2019. The tenants presented a receipt dated September 16, 2019 which stated that the tenants paid rent of \$1,300.00 for October 2019. The landlord denied this and she claimed that this was a false receipt.

The tenants claimed damages for loss of quiet enjoyment. The tenants testified that the landlord constantly harassed them. The tenants provided numerous text messages between the parties exhibiting a hostile relationship between the parties. Both parties claimed that the police needed to respond numerous times in regards to the other's conduct.

The tenants have claimed monetary compensation based on an allegation that the landlord terminated the tenant's electricity utilities. In the amendment to their claim, the tenants submitted a monetary worksheet demanding \$393.10 for reimbursement of electric utility charges. At the hearing, the tenants argued that their claim for electric utilities reimbursement was actually higher. However, pursuant to *Residential Tenancy Branch Rules*, Rule 2.2, the tenants' claim is limited to the amount stated in their amendment, being \$393.10.

The tenants also testified that they needed to stay at hotel until they got their electric services reconnected. The tenants presented an invoice for a hotel stay from October 6, 2019 to October 7, 2019 showing a room charge of \$90.54.

The landlord denied the tenants' claim regarding electric utilities. The landlord testified that the tenants were responsible for electric utilities pursuant to the tenancy agreement and the landlord testified that she appropriately closed her electrical utility account when the tenancy started.

Analysis

Upon review of the purported tenancy agreements, I find that the tenancy agreement presented by the tenants contains a purported signature from the landlord on the purported addendum which does not appear to match the landlord's signature on the other documents signed by the landlord. Furthermore, I also find that the landlord's purported signature on the September 16, 2019 receipt also contains a purported signature from the landlord which is not consistent with the landlord's signature on the other documents signed by the landlord. In addition, the handwriting on the September 16, 2019 receipt does not appear to match the landlord's handwriting.

As such, I find that, on the balance of probabilities that the purported tenancy agreement submitted by the tenants and the purported receipt dated September 16, 2019 are not genuine documents. Furthermore, because I find herein that the tenants have presented non-genuine documents as evidence in this matter, I find that the tenants do not have credibility as truthful witnesses and I find their testimony to be unreliable. To the extent that the tenants' testimony is inconsistent with the landlord's testimony, I find the landlord's testimony to be more reliable.

Based on the landlord's testimony, I find that on the balance of probabilities the tenants did not pay any rent for October 2019. For the reasons stated above, I did not find the

September 16, 2019 receipt proffered by the tenants to be a genuine document and I did not find the tenants testimony that they paid the October 2019 rent to be credible.

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 tenants did not pay the October 2019 rent and I find that the landlord is entitled to a monetary award of \$1,300.00 for unpaid rent in October 2019.

Since the landlord has been successful in her claim, I grant the landlord’s application for reimbursement of the filing fee pursuant to section 72 of the *Act*.

I find that the tenants have failed to provide sufficient evidence to establish that the landlord breached the tenancy agreement or the Act by closing her electrical utility account. Based on the tenancy agreement provided by the landlord and the landlord’s testimony, I find that on the balance of probabilities that electric utilities were not included in the tenancy agreement. For the reasons stated above, I find that the tenancy agreement proffered by the tenants is not a genuine document and I do not find the tenants testimony to be reliable. Accordingly, I dismiss the tenants’ application for compensation relating to the electric utilities.

Furthermore, I find that the tenants have failed to provide sufficient evidence to establish that the landlord deprived the tenants of quiet enjoyment. Based on the evidence of both parties, I find that the parties were mutually hostile but there is not sufficient evidence to establish the tenant’s claim for loss of quiet enjoyment. Accordingly, tenants claim for loss of quiet enjoyment is dismissed.

Since the tenants have not been successful in their claims, I deny the tenant’s application for reimbursement of the filing fee pursuant to section 72 of the *Act*.

Based on the testimony of the landlord as corroborated by the terms tenancy agreement, I find that the landlord holds a security deposit of \$650.00 which may be deducted from the damages owed by the tenants pursuant to section 72(2)(b) of the *Act*.

Accordingly, I find that the landlords are entitled to a monetary order of \$750.00, calculated as follows.

<u>Item</u>	<u>Amount</u>
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October rent unpaid	\$1,300.00
Less security deposit	-\$650.00
Filing fee	\$100.00
Total	\$750.00

Conclusion

The tenants' application is dismissed.

I grant the landlord a monetary order in the amount of **\$750.00**. If the tenants fail to comply with this order, the landlord 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: November 09, 2019

Residential Tenancy Branch