



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 originated as a direct request proceeding which was then set for a participatory hearing. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 and I were the only ones who had called into this teleconference.

The landlord testified that he personally served the tenants with the Notice of Reconvened Hearing, the interim decision, and all other required documents within three (3) days of receiving the Interim Decision which adjourned the landlord's application to a participatory hearing. I find the above documents were served on the tenants in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [*director's powers and duties*], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the “Rules”) states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord’s original application claimed unpaid rent in the amount of \$1,900.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to \$3,800.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord’s application to include a monetary claim for all outstanding rent in the amount of \$3,800.00.

The landlord testified that the tenants moved out of the subject rental property in mid October 2019 and therefore withdrew his application for an Order of Possession. Pursuant to section 64 of the *Act*, I amend the landlord’s application for dispute resolution and remove the landlord’s claim for an Order of Possession for Unpaid Rent.

Issued to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on March 1, 2019 and ended mid October 2019. Monthly rent in the amount of \$1,900.00 was payable on the first day of each month. A security deposit of \$700.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that the tenants have not provided him with their forwarding address in writing and that he has not returned the tenants' security deposit to them.

The landlord testified that the tenants informed him in the first week of October 2019 that they were moving out of the subject rental property. The landlord testified that the tenants did not pay any rent for September or October 2019.

Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,900.00 on the first day of each month. Based on the undisputed testimony of the landlord I find that the tenants did not pay rent in accordance with section 26(1) of the *Act* and owe the landlord \$3,800.00 in unpaid rent for September and October 2019.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenants. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of \$700.00 in part satisfaction of his monetary claim for unpaid rent against the tenants.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
September rent	\$1,900.00
October rent	\$1,900.00
Filing Fee	\$100.00
Less security deposit	-\$700.00
TOTAL	\$3,200.00

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 26, 2019

Residential Tenancy Branch