



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR
FFL OPRM-DR

Introduction

This hearing dealt with applications filed by both the tenant and the landlord pursuant to the *Residential Tenancy Act* (“Act”).

The tenant applied for an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46.

The landlord applied for:

Authorization to recover the filing fee for this application from the tenant pursuant to section 72; and

An order of possession and a monetary order for unpaid rent, by direct request pursuant to sections 46 and 55.

None of the tenants named in the tenant application attended the hearing. The landlord attended the hearing and was represented by her spouse, SG (“landlord”). The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that he served each of the tenants with an Application for Dispute Resolution Proceedings Package by registered mail on October 27, 2019. Tracking numbers for each of the mailings is listed on the cover page of this decision. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord’s application on November 1, 2019, five days after the mailings.

Preliminary Issue

A copy of the tenancy agreement was provided as evidence by the landlord. The tenancy agreement shows only one of the tenants, TK signed the tenancy agreement. Only the tenant who signed the tenancy agreement is deemed a party to the tenancy

agreement and is liable for losses or capable of receiving compensation from the landlord. In accordance with Rule 4.2 I determined that the other applicants had no standing to commence an application and I dismissed their participation as applicants and in this proceeding. The landlord named the tenant TK in her application and any monetary order awarded to the landlord would be against that tenant only.

Preliminary Issue

The landlord testified that the tenants had vacated the rental unit on November 20, 2019. As the tenants no longer occupy the rental unit, the order of possession is no longer a requirement. Pursuant to section 62(4), I dismiss this part of the landlord's application seeking an Order of Possession pursuant to section as it does not disclose a dispute that may be determined under Part 5 of the *Act*. Likewise, I dismiss the tenant's application to cancel the 10 Day Notice for the same reasons.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?
Can the landlord recover the filing fee?

Background and Evidence

The landlord provided the following undisputed testimony. The tenancy began on May 1, 2019. Rent was set at \$1,600.00 payable on the first day of each month. A security deposit of \$800.00 was collected by the landlord which the landlord continues to hold.

In June 2019, the tenant only paid \$1,535.00 of the June rent on June 4, 2019. Rent for the months of July and August were paid, however no rent was received for the months of September, October or November 2019. The tenants moved out on November 20th. The landlord sought to amend his application for a monetary order to include pro-rated rent for the month of November.

The landlord seeks the following monetary order:

| Item | Amount |
|-------------------------------------|-------------------|
| June rent (arrears) | \$65.00 |
| September rent | \$1,600.00 |
| October rent | \$1,600.00 |
| November pro-rated rent for 20 days | \$1,066.67 |
| Total | \$4,332.67 |

On October 7, 2019, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The effective date on the Notice was October 17, 2019 and the Notice indicates the tenants are \$1,665.00 in arrears as of October 1, 2019. The landlord testified that he posted the Notice to the tenant's door on October 7, 2019 and filed a witnessed proof of service document as well as a photograph of the Notice on the door as evidence.

Analysis

The tenants did not attend the hearing which was scheduled by conference call at 9:30am. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply. **Consequently I dismiss the tenants' application without leave to reapply.**

Their application is also dismissed due to the fact that they were conclusively presumed to have accepted the tenancy ended by not filing an application **within five days** of receiving the Notice in accordance with section 46(4) of the *Act*. The tenants were served with the Notice by having it posted to their door, on October 7, 2019. I find the tenants were deemed served with the Notice on October 10, 2019, three days after it was posted to the door in accordance with sections 88 and 90 of the *Act*. The tenants filed to dispute the Notice on October 16, 2019, **six days** after the tenants were deemed served with the Notice.

I find that the tenant TK was obligated to pay the \$1,600.00 monthly rent. I accept the landlord's undisputed evidence that the tenancy ended on November 20, 2019 and that the tenant TK did not pay the \$65.00 in arrears for June, rent for the months of September, October or the first 20 days of November. In accordance with Rule 4.2 of the Residential Tenancy Rules of Procedure, I allow the landlord to amend her claim to include the pro-rated rent for November and I issue a monetary award in the landlord's favour for unpaid rent of **\$4,332.67**, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of \$800.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

| Item | Amount |
|-----------------------|-------------------|
| Monetary Award | \$4,332.67 |
| Filing fee | \$100.00 |
| Less security deposit | (800.00) |
| Total | \$3,632.67 |

Conclusion

I issue a monetary order in the landlord's favour against the tenant, TK in the amount of **\$3,632.67**. The tenant must be served with this Order as soon as possible. Should the tenant 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: December 09, 2019

Residential Tenancy Branch