



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL OPRM-DR

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 award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord appeared, assisted by their family member and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they had served each of the tenants with the notice of hearing and evidence by registered mail sent on October 25, 2019. The landlord provided valid Canada Post tracking numbers as evidence of service. Based on the evidence I find that each of the tenants is deemed served with the landlord's materials in accordance with sections 88, 89 and 90 of the *Act* on October 30, 2019, five days after mailing.

At the outset of the hearing the landlord said the tenants had abandoned the suite and withdrew the portion of their application seeking an Order of Possession. The landlord also sought to change the amount of the monetary order sought. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as additional rent coming due is reasonably foreseeable, I amend the landlord's application to increase the monetary claim from \$650.00 to \$1,950.00. However, I decline to amend the

application to include a claim for damages as the landlord has not severed the tenants with this new claim in accordance with Rule 4.6 and adding a new head of claim without proper notice would be prejudicial to the tenants.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

The monthly rent for this periodic tenancy was \$1,300.00 payable on the first of each month. A security deposit of \$650.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord testified that the tenants failed to pay the full amount of rent for October 2019 and there was an arrear of \$650.00 as at October 2, 2019 when the 10 Day Notice was issued. The landlord said that the tenants failed to make any payment against the arrears and failed to pay rent for November 2019. The landlord said that the tenants abandoned the rental unit sometime in November 2019 without notice. The total arrear for this tenancy as of the date of the hearing is \$1,950.00.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the evidence of the landlord that monthly rent for this tenancy was \$1,300.00 and that the tenants failed to pay that amount for October and November 2019. I accept the landlord's evidence that the total arrear as of the date of the hearing, December 9, 2019 is \$1,950.00. Accordingly, I find that the landlord is entitled to a monetary award in that amount as against the tenants.

As the landlord was successful in their application they are also entitled to recover the filing fee.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary award in the landlord's favour in the amount of \$1,400.00, allowing the landlord to recover the unpaid rent and filing fee and retain the security deposit. 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: December 9, 2019

Residential Tenancy Branch