



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC OPC MNRL-S FFL

Introduction

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

The landlord applied 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 applied for:

- Cancellation of the 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) pursuant to section 47; and
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

The tenants did not attend this hearing which lasted approximately 10 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 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 served their application for dispute resolution and evidence on the tenant personally on or about December 18, 2019. Based on the evidence I find that the tenant was served on that date in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the landlord testified that the tenants have vacated the rental unit and withdrew the portion of their application seeking an Order of Possession. The landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the tenants have failed to pay additional rent and that the arrears as of the date of the hearing is \$467.64. The landlord also requested to amend their application to seek the cost of damage to the rental unit. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to increase the landlord's monetary claim from \$333.75 to \$467.64 as the additional amount of rent arrears could be reasonably anticipated. However, I decline to amend the landlord's Application to include a claim for the cost of damages to the rental unit as the landlords have not served the tenants 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

This periodic tenancy began in July 2018. The current monthly rent is \$1,383.75 payable on the first of each month. A security deposit of \$625.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord submits that there is an arrear of \$467.75 for this tenancy arising from unpaid rent and late charges applicable under the terms of the tenancy agreement. The landlord submitted a memorandum showing the outstanding charges.

Analysis

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – 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 reapply.

Therefore, as the tenants did not attend the hearing, I dismiss the tenants' claim in its entirety without leave to reapply.

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 landlord's undisputed evidence that there is an arrear for this tenancy of \$467.64. The landlord submitted a tenancy agreement showing the amount of rent payable and the late charges applicable. The landlord provided a memorandum showing the date of rent payments and the outstanding charges unpaid by the tenants. I find that the landlord has met their evidentiary burden and issue a monetary award in the amount of \$467.64 accordingly.

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

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

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

The portion of the landlord's application seeking an Order of Possession is withdrawn.

The landlord is authorized to hold \$567.64 of the security deposit of \$625.00 in full satisfaction of the monetary award for unpaid rent, late fees and filing fees. The deposit is reduced to \$57.36.

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: February 3, 2020