



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNDL-S, FFL, CNR

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for damage, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenants filed an Application for Dispute Resolution to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlord stated that on December 16, 2019 the Dispute Resolution Package and a copy of evidence that was submitted to the Residential Tenancy Branch on December 10, 2019 was sent to each Tenant, via registered mail, at the rental unit. The Landlord cited two tracking numbers that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however, the Tenants did not appear at the hearing.

As the Tenants were properly served with notice of this hearing, the hearing proceeded in the absence of the Tenants.

In January of 2020 the Landlord submitted a blank Amendment to an Application for Dispute Resolution to the Residential Tenancy Branch. The Landlord stated that she believed she submitted a completed copy of this document, in which she increased the

amount of her claim to \$4,160.00. She stated that a completed copy of this document was served to the Tenants, by registered mail, on January 14, 2020.

In the absence of evidence to the contrary, I find that that a completed Amendment to an Application for Dispute Resolution was served to the Tenants. As such, I permitted the Landlord to submit a copy of that completed document to the Residential Tenancy Branch by February 04, 2020. That document was submitted to the Residential Tenancy Branch on February 03, 2020 and I will be considering the amended claim.

In January of 2020 the Landlord submitted evidence to the Residential Tenancy Branch, some of which was previously submitted to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, via registered mail, on January 14, 2020. In the absence of evidence to the contrary, I find that these documents were served to the Tenants and they were accepted as evidence for these proceedings.

In January of 2020 the Landlord submitted a blank Monetary Order Worksheet. The Landlord stated that she believed she submitted a completed copy of this document, which she read out during the hearing. She stated that a completed copy of this document was served to the Tenants, by registered mail, on January 14, 2020.

In the absence of evidence to the contrary, I find that that a completed Monetary Order Worksheet was served to the Tenants. As such, I permitted the Landlord to submit a copy of that completed document to the Residential Tenancy Branch by February 04, 2020. That document was submitted to the Residential Tenancy Branch on February 03, 2020 and I will be considering that document.

The Landlord was given the opportunity to present relevant oral evidence and to make relevant submissions. Each party in attendance at the hearing affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Preliminary Matter #1

This hearing commenced at the scheduled start time of 11:00 a.m. on February 3, 2020. By the time the teleconference ended at 11:30 a.m., the Tenants had not appeared.

I find that the Tenants failed to diligently pursue their Application for Dispute Resolution and I therefore dismiss their Application for Dispute Resolution, without leave to reapply.

Preliminary Matter #2

On the Monetary Order Worksheet, the Landlord clearly informs the Tenants that she is seeking compensation for unpaid rent. I therefore find it reasonable to consider that claim at these proceedings.

Preliminary Matter #3

On the Monetary Order Worksheet, the Landlord has claimed compensation for a missing axe and for repairs to the rental unit, including repair to a lock and broken glass in an airtight stove.

Section 37(2)(a) of the *Act* requires tenants to leave a rental unit reasonably clean and undamaged at the end of a tenancy, except for reasonable wear and tear.

I find it entirely possible that the Tenants may repair the damage being claimed by the Landlord prior to the end of the tenancy. I therefore find that the Landlord's claim for this damage is premature.

In the event the Tenants do not repair the aforementioned damage and return the axe by the time they vacate the rental unit, the Landlord has the right to file another Application for Dispute Resolution in which she claims compensation for this damage.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a monetary Order for unpaid rent?

Is the Landlord entitled to retain all of part of the security deposit?

Background and Evidence

The Landlord stated that:

- this tenancy began on January 01, 2019;
- the Tenants agreed to pay monthly rent of \$1,250.00 by the first day of each month;
- she never agreed to change the due date of the rent;
- the Tenants paid a security deposit of \$625.00 and a pet damage deposit of \$625.00;
- the Tenants did not pay any rent for December of 2019, January of 2020, or February of 2020; and

- a Ten Day Notice to End Tenancy for Unpaid Rent or Utility, which has a declared effective date of December 13, 2019, was personally served to the female Tenant, who was in the presence of the male Tenant, on December 03, 2019.

Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$1,250.00 by the first day of each month and that the Tenants did not pay rent for December of 2019. As the Tenants are required to pay rent when it is due, pursuant to section 26(1) of the *Residential Tenancy Act (Act)*, I find that the Tenants must pay \$1,250.00 in outstanding rent for December of 2019.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, served pursuant to section 46 of the *Act*, was personally served to the female Tenant on December 03, 2019.

As the Landlord had grounds to serve the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities; the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served to the Tenants; and the Tenants did not pay the outstanding rent within five days of being served the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the Landlord is entitled to an Order of Possession.

As the Tenants did not vacate the rental unit on the effective date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that they are obligated to pay rent, on a per diem basis, for the days they remained in possession of the rental unit. As the Tenants have already been ordered to pay rent for the period between December 13, 2019 and December 31, 2019, I find that the Landlord has been fully compensated for that period.

I find that the Tenants must compensate the Landlord for the month of January of 2020, as they remained in possession of the rental unit for that month. I find that the Tenants must also compensate the Tenant for the first three days of February of 2020, at a per diem rate of \$43.10, given that they were still in possession of the rental unit on February 03, 2020.