



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR, OLC, RP
 For the landlord: OPR, MNR, FF

Introduction, Preliminary and Procedural Matters

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued to them by the landlord, for an order requiring the landlords to comply with the Act and for an order requiring the landlord to make repairs to the rental unit.

The landlords applied for an order of possession of the rental unit pursuant to the Notice, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The tenants and the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

The landlords also filed an amended application, seeking additional monetary compensation, for other matters such as damages. The landlord said that she served her amended application on the tenants by registered mail to the rental unit address; however, she confirmed that the tenants had already vacated that address when it was mailed.

I find the landlords did not comply with section 89(1) of the Act, as they sent their amended application to an address at which the tenants no longer resided. Their amended application is dismissed, except for their claim for unpaid rent for January 2020, as will be explained, with leave to reapply.

I also find that the landlords' request for an order of possession of the rental unit is now moot, as the tenants have vacated the rental unit, sometime in January 2020. I have therefore excluded that request and the hearing proceeded on the landlords' monetary claim for unpaid rent.

Additionally, the landlord said she did not receive the tenants' application for dispute resolution. The tenants said that they sent their application to the landlords by email and regular mail. I find the tenants failed to serve the landlords with their application as required by section 89(1) of the Act.

I have reviewed the relevant evidence of the parties before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation from the tenants and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence is that this tenancy began on September 1, 2019, for a monthly rent of \$3,000.00 and a security deposit of \$1,500.00 and pet damage deposit of \$1,000.00 paid by the tenants to the landlords.

The landlord confirmed that she has retained the two deposits.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain and support their Notice.

The landlord's evidence showed that the tenants were served with the Notice on December 3, 2019, by registered mail, listing unpaid rent of \$3,000.00 as of December 1, 2019. The effective date listed on the Notice was December 18, 2019.

The landlord asserted that since the issuance of the Notice, she has not received rent from the tenants, and that they owe unpaid rent of \$6,000.00, for the months of December 2019 and January 2020, as the tenants remained in the rental unit in January, without paying rent.

The landlord has requested that they be allowed to amend their monetary claim to include unpaid rent for January 2020.

Tenants' response-

The tenants confirmed that they did not pay rent for December, due to the issues of the condition of the rental unit and the lack of repairs by the landlords. The tenants confirmed that they filed their application to dispute the Notice as they did not want to move out prior to the end of December 2019.

The tenants submitted that they vacated the rental unit in early January 2020.

There was no evidence from the tenants that they informed the landlord when they moved out.

Analysis

Based on the oral and written evidence of the parties, and on the balance of probabilities, I find the following.

Tenants' application -

I dismiss the tenants' application as I have found that they failed to serve the landlords as required by the Act. As the tenancy has ended and the issue of orders for the landlords is now moot, it is dismissed without leave to reapply.

Landlords' application -

The Act requires a tenant to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a

tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenants were served a 10 Day Notice, that the tenants owed the unpaid rent listed and did not pay the outstanding rent within 5 days of service.

While the landlords no longer need an order of possession of the rental unit, I find by the undisputed testimony of the parties that the tenants stayed in the rental unit until sometime in January 2020, without paying rent.

I therefore find it reasonable to amend the landlords' application to include a claim for unpaid rent for January 2020.

As the undisputed evidence of both parties is that the tenants failed to pay rent of \$3,000.00 for the months of December 2019 and January 2020, each, I therefore find the landlords are entitled to a monetary award of \$6,100.00, comprised of unpaid rent of \$6,000.00 and the \$100.00 filing fee paid by the landlords for this application.

At the landlords' request, I direct them to retain the tenants' security deposit of \$1,500.00 and their pet damage deposit of \$1,00.00 in partial satisfaction of their monetary award of \$6,100.00.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$3,600.00.

Should the tenants fail to pay the landlord this amount without delay, the order must be served on the tenants to be enforced. The tenants are advised that costs of such enforcement are recoverable from the tenants.

As to the landlords' amended application, I dismiss it, with leave to reapply, with the exception of the claim for unpaid rent for January 2020, which was dealt with in this decision.

I note that the tenants inquired what they may do about my decision, and they were informed that an information/instruction sheet would be included with their decision. In particular, the tenants were advised that a contact number would be provided in order to speak with a representative of the Residential Tenancy Branch (RTB).

Conclusion

The tenants' application is dismissed without leave to reapply, for the reasons listed above.

The landlords' application for a monetary order for unpaid rent for December 2019 and January 2020 and recovery of the filing fee has been granted.

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 6, 2020

Residential Tenancy Branch