



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFT

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$1,100 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

This matter was reconvened to a participatory hearing following an *ex parte*, direct request proceeding on December 20, 2019.

The tenant did not attend this participatory hearing, although I left the teleconference hearing connection open until 11:12 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served with a copy of the interim decision made December 20, 2019, the notice of the reconvened hearing issued with that decision, and copies of all documentary evidence via registered mail on December 18 and December 24, 2019. The landlord provided Canada Post tracking numbers confirming these mailings which are reproduced on the cover of this decision. I find that the tenant is deemed served with these packages on December 23 and 29, 2019, five days after their mailings, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue – Amendments of Claim

At the hearing the landlord sought to further amend his application to include a claim for January 2020 rent which he testified remains outstanding.

Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the landlord is seeking compensation for unpaid rent that has increased since he first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include a claim for January 2020 rent (\$1,100).

Preliminary Issue – Order of Possession

The landlord also advised me that the tenant no longer resides at the rental unit. He stated that he no longer requires an order of possession. Accordingly, I dismiss this portion of the landlord's claim, without leave to reapply.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary for \$2,200; and
- 2) recover his filing fee from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written, month to month tenancy agreement starting October 1, 2019. Monthly rent is \$1,100 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$550. The landlord still retains this deposit.

The rental unit is a laneway house. It is fully self-sufficient and has its own electricity, plumbing, bathroom and kitchen.

The landlord testified that the tenant did not pay any rent for the month of December 2019. He testified that the tenant did not provide him with any notice that she was ending the tenancy, or that she would be vacating the rental unit.

On December 3, 2019, the landlord served the tenant with a 10-Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") for \$1,100 in unpaid rent and \$108.55 in unpaid utilities. The landlord has not applied for compensation for the unpaid utilities.

The landlord testified that the tenant did not pay monthly rent for January 2020 either. He testified that in early January 2020, he investigated the rental unit and determined that the tenant had abandoned it. He testified that the tenant appeared to have taken her belongings out of the rental unit. He changed the locks on the rental unit in mid-January 2020 and has not received any complaint from the tenant.

Analysis

Based on the testimony of the landlord's agent, I find that the tenant was obligated to pay monthly rent in the amount of \$1,100. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental for December 2019. I order that the tenant pay the landlord the rental arrears for December 2019.

I accept the evidence that the tenant abandoned the rental unit and that the landlord did not discover this until early January 2020.

Policy Guideline 3 states:

Where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options. These are:

1. Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment;
2. Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy.

The landlord has not brought a claim for damages for loss of rent for the remainder of the term of the tenant. Rather, he has brought a claim for unpaid rent. As such, the first option above applies.

I do not have an exact date as to when the landlord discovered the tenant had abandoned the rental unit. The landlord testified that it was in “early January 2020” and that he replaced the locks on the rental unit in “mid-January”. Absent more specificity, I find it appropriate to deem that the landlord discovered that the rental unit had been abandoned at the end of the first week of January. As such, he is entitled to 25% of January 2020’s monthly rent.

As the landlord has been successful in his application, I order that the tenant reimburse him the filing fee (\$100).

Pursuant to section 72(2) of the Act, I order that the landlord may retain the security deposit in partial satisfaction of the monetary orders made.

I order that the tenant pay the landlord \$925, representing the following:

December 2019 Rent	\$1,100
25% of January 2020 Rent	\$275
Filing Fee	\$100
Credit for Security Deposit	-\$550
Total	\$925

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$925.

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 27, 2020

Residential Tenancy Branch