



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 was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- an order of possession for cause pursuant to section 46 and 55 of the *Act*;
- monetary compensation for unpaid rent pursuant to section 67 of the *Act*;
- filing fee pursuant to section 72 of the *Act*.

The landlord's application was initially a Direct Request but was convened to a participatory hearing due to issues with the tenancy agreement.

The landlord RZ and tenant AK attended the hearing via conference call. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions.

The tenant AK confirmed receipt of the Notice of Dispute Resolution and landlord's evidentiary package after it was sent to the tenants by way of Canada Post Registered Mail in two separate mailings on January 20, 2020. The tenants are found pursuant to section 88 and 89 of the *Act* to have been served with this package in accordance with the *Act*. The Canada post tracking numbers are listed on the cover page of this decision.

The tenant AK confirmed that they did not dispute the 10 Day Notice or file any evidentiary materials. Tenant confirmed that he did not provide his forwarding address to the landlord.

In the original Direct Request Application, the landlord was seeking the sum of \$900.00 comprising of unpaid rent for the month of January 2020.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord testified that the tenancy began on December 1, 2019. The monthly rent in the amount of \$900.00 was payable each month and a security deposit of \$450.00 was paid by the tenants and continues to be held in Trust by the landlord.

The landlord testified the tenants have not paid the full rent for the month of January 2020.

The tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), dated January 3, 2020 by posting on the rental unit door on January 3, 2020 and that this service was witnessed by a third party.

The tenant testified that they had vacated the rental unit on February 14, 2020 and had texted the landlord on his cell when they moved out.

The landlord testified that they are no longer seeking an order of possession but request that the keys to the rental unit to be returned.

Analysis

The Notice indicates an effective move-out date of January 14, 2020

The grounds to end the tenancy cited in the Notice were:

- 1) the tenants owe the sum of \$900.00 rent for the month of January 2020.

Based on the landlord's undisputed testimony and the notice before me, I find that the tenants were served with a valid Notice. The tenants did not file an application to dispute the Notice within 5 days of its receipt or pay the rent due for January 2020.

I am satisfied that the Notice complies with section 52 of the *Act*. Therefore, the tenants are conclusively presumed pursuant to section 46(4) of the *Act* to have accepted that the tenancy ended on the effective date of January 14, 2020.

Rules of Procedure 4# allows for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served.

In consideration of the evidence filed and the testimony of the landlord, further to Rule 4# I find the tenant could reasonably have anticipated that the landlord would claim authorization to apply the security deposit the landlord holds to the monetary award. I accordingly allow the landlord to amend the application as sought.

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1:00 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) **give the landlord all the keys or other means of access that are in the possession** or control of the tenant and that allow access to and within the residential property.

Pursuant to section 37, I order that the tenants arrange a time convenient to both parties to return the keys of the rental unit within 7 days of this decision.

Pursuant to sections 67 of the *Act*, I order that the tenants pay the landlord \$900.00 representing the rent owed for January 2020 deducting the security deposit of \$450.00 held in Trust.

As the landlord has been successful in this application, I grant the landlord a monetary award of \$100.00 for reimbursement of the filing fee pursuant to section 72 of the *Act*.

Conclusion

I grant a monetary order for the sum of \$ 550.00 comprised of \$450 for unpaid rent and \$100.00 filing fee pursuant to section 67 and 72 of the *Act*.

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: March 30, 2020

Residential Tenancy Branch