



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing dealt with the adjourned Direct Request Application by the Landlord filed under the Residential Tenancy Act (the “Act”), for an order of possession to enforce a 10-Day Notice for Unpaid Rent and Utilities (the Notice) issued on January 2, 2020, for a monetary order for unpaid rent, and to recover the filing fee paid for this application. The matter was set for a conference call.

An agent for the Landlord (the “Landlord”) and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter- Tenant Cautioned

During the hearing, the Tenant was cautioned several times regarding personal conduct, outbursts, the use of inappropriate language and the interruption of the other parties’ testimony.

Both the parties to this dispute were advised of the expected appropriate conduct during these proceedings.

When the Tenant continued to interrupt these proceedings, and use inappropriate language, the Tenant was cautioned that their phoneline would be muted if further

disruption to the proceedings continued. The Tenant continued to disrupt these proceedings and the Tenant's phoneline was muted.

The Tenant was invited back to these proceeding, 10 minutes late; however, the Tenant proceeded to disruptive to these proceedings and was muted again. During the second muting of the Tenant's phoneline the tenant disconnected from this hearing and did not call back into these proceedings.

Issues to be Decided

- Are the Landlords entitled to an order of possession pursuant to section 46 of the Act?
- Are the Landlords entitled to a monetary order for unpaid rent?
- Are the Landlords entitled to the return of their filing fee?

Background and Evidence

The tenancy agreement shows that this tenancy began January 1, 2019, as a one-year fixed term tenancy, that rolled into a month to month after the first year. Rent in the amount of \$1,500.00 was to be paid by the first day of each month. The parties agreed that the Landlords are holding a \$750.00 security deposit for this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they personally served the Tenant with the Notice to End Tenancy on January 2, 2020, with an effective date of January 12, 2020. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenants that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenants are presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Tenant testified that they did receive the Notice dated January 2, 2020, and that they did not dispute the Notice or pay the outstanding rent as indicated on the Notice. The Tenant testified that they moved out of the rental unit on January 15, 2020, in accordance with the Notice.

The Landlord testified that as of the date of this hearing the Tenant was outstanding \$3,000.00 in rent; consisting of \$1,500.00 in rent for December 2019, and \$1,500.00 in

rent for January 2020. The Landlord testified that he is requesting a Monetary Ordre for the outstanding rent for this tenancy.

The Tenant testified that the Landlord's brother had told them, by text message, that the December 2019 rent has been waved and that the security deposit for this tenancy would be used to cover the rent due for the period between January 1 to January 15, 2020. The Tenant testified that they do not owe any rent for this tenancy. The Tenant testified that they did not have anything in writing form the Landlord to waive the rent for December 2019 and the second half of January 2020, just a text message from the Landlord's brother. The Tenant confirmed that they did not submit the text message into documentary evidence.

The Landlord confirmed that an offer had been text message to the Tenant, offering to wave the December 2019 rent if the Tenant would move out no later than December 31, 2019. However, as the Tenant did not move out before December 31, 2019, the offer was no longer available and the full rent is due.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of both parties that the Landlord personally served the Tenant with the Notice to end on January 2, 2020. Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

I accept the testimony of the Tenant that they moved out of the rental unit on January 15, 2020. I find that the Tenant moved out in accordance with the Landlord's Notice issued January 2, 2020.

I find that this tenancy has already ended in accordance with the *Act* and that there is no requirement for an Order of Possession. Therefore, I dismiss the Landlord's application for an Order of Possession of the rental unit.

I accept the testimony of the Landlord that the Tenant has not paid the outstanding rent for December 2019 and January 2020, for this tenancy. I find that the Landlord has proven their entitlement to a monetary award in the amount of \$3,000.00 in outstanding rent.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for their application.

I grant the Landlord a monetary order in the amount of \$2,350.00; consisting of \$3,000.00 in unpaid rent, \$100.00 for the recovery of the filing fee, less the security deposit of \$750.00 that the Landlord is holding for this tenancy.

Conclusion

I grant the Landlord a **Monetary Order** in the amount of **\$2,350.00**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 26, 2020

Residential Tenancy Branch