



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on March 5, 2020. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord attended the hearing and provided testimony. The tenants did not attend the hearing. The Landlord testified that she sent the application package, along with her supporting evidence to each of the tenants on January 8, 2020, by registered mail. Proof of service and tracking information was provided showing the Tenants signed for the packages. The Landlord sent the packages to the forwarding address the Tenants provided to her in September 2019 (via the addendum to the tenancy agreement). I find the Tenants are deemed to have received these packages on January 13, 2020, the fifth day after their registered mailing, pursuant to Section 90 of the *Act*.

The Landlord testified that the Tenants abandoned the rental unit at the end of December 2019, and she no longer requires an order of possession. I have amended the Landlord's application accordingly and will only be considering the Landlord's request to recover unpaid rent.

Further, the Landlord requested to amend her application to allow her to retain the security deposit to offset rent owed. I hereby amend the Landlord's application accordingly.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issues to be Decided

1. Is the landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
3. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The Landlord testified that monthly rent is \$2,000.00, and is due on the 1st of the month. The Landlord stated that she currently holds a security deposit in the amount of \$1,000.00. The Tenancy Agreement provided into evidence shows that the Tenants were under a fixed term agreement until the end of April 2020.

The Landlord stated that she never received any rent from the Tenants for December 2019. As such, she issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) to the Tenants in person on December 16, 2019, because they owed \$2,000.00 in rent at that time. The Landlord stated that the Tenants never paid any money since getting the Notice. The Landlord stated that the Tenants told her that they would not be moving out, or paying, so the Landlord filed an application for dispute resolution. The Landlord also stated that she decided to do an inspection of the rental unit, so she gave them notice of this inspection on December 27, 2019. Subsequently, she performed the inspection on December 31, 2019, and found that the Tenants had abandoned the unit.

The Landlord stated that they gave no notice, and simply left the keys on the counter. The Landlord stated that the unit was not cleaned, and had some damage, so by the time she cleaned, and prepared the unit for re-rent, it was not possible to re-rent it for January 2020. As such, the Landlord is seeking \$2,000.00 for January rent as well as \$2,000.00 for December 2019 rent. The Landlord stated she reposted the ad on January 1, 2020, despite it not being cleaned and fixed. The Landlord stated that despite having some interest in the unit, she was unable to re-rent the unit, and it still

remains unrented. The Landlord stated that she also lowered the price on the rental unit by \$50.00 after 2 weeks (Mid- January 2020).

Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from the Landlord's undisputed testimony before me to demonstrate that the tenants owe and have failed to pay \$2,000.00 in rent for December 2019; the Tenants lived in the rental unit for the month of December and did not pay any rent.

I note the Tenants were under a fixed term tenancy agreement until the end of April 2020, as such, they were not in a position to give notice, or end the tenancy prior to the end of the fixed term, without the consent of all parties involved. It appears the manner in which the Tenants vacated the unit left the Landlord in a difficult position to be able to recover January 2020 rent by re-renting it. The Tenants abandoned the rental unit, without notice, at the end of December 2019. The Landlord did not realize the Tenants were planning to leave, or that they had actually left, until December 31, 2019, the day she attended for an inspection.

Since the Tenants abandoned the unit prior to the end of the fixed term agreement, I find they breached section 45 of *Act*, as well as the Tenancy Agreement. I find they are liable for January 2020 rent. I also find the Tenants further hampered the Landlord's ability to re-rent the unit, as it appears they left it uncleaned, and with some minor damage; they did so at an awkward time for the landlord to be able to re-rent the unit for January. I find there is sufficient evidence to show the Landlord mitigated her losses for January 2020 by reposting the ad immediately, and subsequently lowering the rent part way through the month. Although the unit is still unrented, I note the Landlord is only seeking rent for December 2019, and January 2020, not for the full fixed term (until the end of April 2020). As such, I have only considered the Landlord's mitigation for the month of January. Ultimately, I find the Tenants are responsible for December and January rent, totalling \$4,000.00.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the Tenants to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$4,000.00
Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$1,000.00)
TOTAL:	\$3,100.00

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$3,100.00**. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 05, 2020

Residential Tenancy Branch