



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“*Act*”), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The “male landlord” and the two tenants did not attend this hearing, which lasted approximately 29 minutes. The female landlord (“landlord”) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had permission to represent the male landlord at this hearing (collectively “landlords”).

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. A decision is made on the basis of the landlords’ paper application only, not any participation by the tenants. An “interim decision,” dated January 6, 2020, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

By way of the interim decision, the landlords were required to serve the interim decision and notice of reconvened hearing to the tenants. The landlord testified that the tenants were each separately served with the above documents on January 9, 2020, both by way of registered mail to the rental unit where the tenants were residing. The landlord provided two Canada Post tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the

interim decision and notice of reconvened hearing on January 14, 2020, five days after their registered mailings.

The landlord testified that the tenants were each separately served with the landlords' original application for dispute resolution by direct request on January 3, 2020, both by way of registered mail to the rental unit where the tenants were residing. The landlords provided two Canada Post receipts and confirmed the tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlords' original application on January 8, 2020, five days after their registered mailings.

At the outset of the hearing, the landlord confirmed that the tenants had vacated the rental unit and the landlords no longer required an order of possession. Accordingly, this portion of the landlords' application is dismissed without leave to reapply.

Preliminary Issue – Amendment of Landlords' Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to increase the landlord's monetary claim to include January 2020 rent of \$2,350.00. The landlords filed an amendment to this application to increase the monetary claim to include the above unpaid rent amount but was unable to serve the tenants because they had moved out of the rental unit as of January 26, 2020.

I find that the tenants are aware that rent is due as per their tenancy agreement. Therefore, the tenants knew or should have known that by failing to pay their rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlords' claims for increased rent, despite the fact that they did not attend this hearing.

Issues to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recover the filing fee paid for this application?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on April 1, 2018 and ended on January 26, 2020. Monthly rent in the amount of \$2,350.00 is payable on the first day of each month. A security deposit of \$1,175.00 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The landlords seek a monetary order of \$5,875 for unpaid rent and the \$100.00 filing fee paid for this application. The landlord claimed that the tenants failed to pay rent of \$2,350.00 for November 2019, \$1,175.00 for December 2019, and \$2,350.00 for January 2020, totaling \$5,875.00. She said that only a partial rent payment was made in December 2019, leaving a balance of \$1,175.00, as noted above.

Analysis

As per section 26 of the *Act*, the tenants are required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$5,875.00 from November 2019 to January 2020. Therefore, I find that the landlords are entitled to \$5,875.00 in rental arrears from the tenant.

The landlords continue to hold the tenants' security deposit of \$1,175.00. Although the landlords did not apply to retain the deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' entire security deposit of \$1,175.00 in partial satisfaction of the monetary award. No interest is payable on the deposit over the period of this tenancy.

As the landlords were partially successful in this application, I find that they are entitled to recover the \$100.00 application filing fee from the tenants.

Conclusion

The landlords' application for an order of possession is dismissed without leave to reapply.

I order the landlords to retain the tenants' entire security deposit of \$1,175.00.

I issue a monetary order in the landlords' favour in the amount of \$4,800.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 06, 2020

Residential Tenancy Branch