



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR
 FFL, OPRM-DR

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application filed on January 14, 2020 he sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on January 7, 2020 (the "Notice"). In the Landlord's Application, filed on January 18, 2020, the Landlord sought an Order of Possession and monetary compensation based on the Notice, as well as recovery of the filing fee.

The hearing of the parties' cross applications was scheduled for 11:00 a.m. on March 12, 2020. Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:17 a.m. Additionally, 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.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that he served the Tenant with the Notice of Hearing and the Application on January 22, 2020 by registered mail.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of January 27, 2020 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant failed to call into the hearing; as such, his Application is dismissed without leave to reapply.

The Landlord confirmed that the Tenant vacated the rental unit on March 1, 2020 such that the Landlord's request for an Order of Possession was no longer required.

The Landlord also confirmed his email addresses during the hearing as well as his understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation for unpaid rent?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began November 1, 2019. Monthly rent was payable in the amount of \$1,350.00 and the Tenant paid a security deposit of \$675.00.

The Landlord stated that the Tenant failed to pay the full amount of rent for January 2020 following which the Landlord issued the Notice. The Landlord confirmed that he posted the Notice on the rental unit door on January 7, 2020.

Although the Tenant applied to dispute the Notice on January 14, 2020, he failed to call into the hearing.

The Landlord further confirmed that the Tenant paid his February 2020 rent, but failed to pay the \$360.00 outstanding from January 2020.

Analysis

After consideration of the Landlord's undisputed testimony and evidence and on a balance of probabilities I find as follows.

I find the Tenant was obligated to pay monthly rent in the amount of \$1,350.00. I accept the Landlord's evidence that the Tenant failed to pay \$360.00 of his January 2020 rent, such that this amount remains outstanding.

A Tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

Rules about payment and non-payment of rent

26 (1)A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are only four occasions, permitted under the *Residential Tenancy Act*, where a tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

I find the Tenant had no legal authority to withhold rent. As such, I find the Landlord is entitled to the \$360.00 claimed for the balance of the January 2020 rent. As the

Landlord has been successful in his Application, I also award him recovery of the \$100.00 filing fee for a total award of **\$460.00**.

Conclusion

The Tenant's Application for an Order canceling the Notice is dismissed.

The Landlord's Application for monetary compensation pursuant to the Notice is granted. Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain \$460.00 from the Tenant's \$675.00 security deposit. The balance of the deposit shall be held and dealt with in accordance with 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 12, 2020

Residential Tenancy Branch