



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 landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent 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 AS attended the hearing via conference call. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions. The tenant did not attend this hearing.

The landlord testified the tenant was served the Notice of Dispute Resolution together with the evidentiary package by posting to the door of rental unit on March 12, 2020.

I find that this satisfied the service requirements set out in sections 88 and 89 of the *Act*, and find the tenant was deemed to have received the documents in accordance with section 90 of the *Act* on March 15, 2020.

Rule of Procedure 7.3 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. I proceeded with the hearing.

This hearing was originally scheduled as a Direct Request but was convened to a participatory hearing on the basis that the tenancy agreement was not signed by the landlord and tenant.

In the original monetary worksheet, the landlord was seeking the sum of \$ 450.00 for the month of February 2020 deducting the security deposit of \$450.00 In the hearing the landlord sought to increase the monetary claim to add to the owed rent for February and rent for March 2020.

Amendment

This hearing was reconvened to a participatory hearing. Paragraph 12 (1) (b) of the Residential Tenancy Regulations ascertains that a Tenancy Agreement has to be signed and dated by the landlord and tenant. I find that there is a tenancy agreement based on a contractual relationship and conduct of the parties. Consideration has been paid in the form of security deposit and rent.

The Residential Tenancy Branch Rules of Procedure rule 4.2 states that amending an application at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the landlord is seeking compensation for unpaid rent that has increased since she first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant.

Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include the rent for March 2020.

Issue(s) to be Decided

Are the landlords entitled to an order of possession pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

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

Background and Evidence

This tenancy commenced on October 1, 2019. The landlord testified that monthly rent in the amount of \$900.00 was payable on the first day of each month. The landlord testified that the tenant paid a security deposit of \$450.00 at the beginning of the tenancy which is held in Trust by the landlord.

The landlord testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), dated February 2, 2020 by attaching to the rental unit door and that this service was witnessed by a third party.

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

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

- 1) the tenant owes the sum of \$ 450.00 for the month of February 2020.

The landlord testified that the rent owed for February was \$900.00 and due to the time passage this amount now included the month of March 2020 but in the monetary worksheet they claimed the sum of \$450.00 deducting the security deposit held in Trust.

The landlord testified that they are no longer seeking an Order of Possession as the tenant vacated the property and are seeking to retain the security deposit of \$450.00 as part of the unpaid rent.

The tenant did not attend the hearing to present any submissions in relation to the Notice and the tenant did not upload any evidence disputing the landlord's Notice.

Analysis

Section 46 of the *Act* states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46(5) says that 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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with a valid Notice. The tenant did not pay the rent or file an application to dispute the Notice within 5 days of its receipt. Therefore, the tenant is conclusively presumed pursuant to section 46(4) of the *Act* to have accepted that the tenancy ended on the effective date of February 14, 2020.

Pursuant to sections 67 of the *Act*, I order that the tenant pay the landlord \$1,800.00 representing the rent owed from February to March 2020.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlords are entitled to retain the tenant's entire security deposit in the amount of \$450.00 in partial satisfaction of their monetary claim against the tenant.

As the landlords have been successful in this application, I find that they are entitled to recover the \$100.00 reimbursement of the filing fee pursuant to section 72 of the *Act*.

Conclusion

I grant a monetary order for the sum of \$1, 450.00 for the unpaid rent, deducting the security deposit and including the \$100.00 filing fee pursuant to section 67 and 72 of the *Act*.

The landlords are 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: April 16, 2020

Residential Tenancy Branch