



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton West Coast Property Management 120
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL, OPR-DR, OPRM-DR**

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") 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 from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The corporate landlord was represented by its agent (the "landlord") who was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord provided evidence that the Interim Decision of the Branch adjourning the Direct Request process to a participatory hearing dated February 24, 2020 was served on the tenant by registered mail on or about that date. The landlord provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on or about March 1, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing the landlord withdrew the portion of their application seeking an Order of Possession explaining that the tenant has abandoned the rental unit. The landlord amended their monetary claim saying that additional rent has come due since filing the original application. As additional rent coming due is reasonably foreseeable, pursuant to section 64(3)(c) of the Act and Rule of Procedure 4.2, I amend the landlord's application to increase the monetary claim from \$1,800.00 to \$3,600.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The landlord provided undisputed evidence on the following facts. This periodic tenancy began on November 1, 2018. The monthly rent was \$1,800.00 payable on the first of each month. A security deposit of \$900.00 and pet damage deposit of \$300.00 were collected at the start of the tenancy and are still held by the landlord. The landlord explained that the municipality changed the numbering system for the street addresses from the time the tenancy started leading to a minor discrepancy between the written tenancy agreement and the address noted in subsequent documentation.

The landlord testified that the tenant has failed to pay full rent for December 2019, and January, February and March 2020 and that there is a rental arrear of \$3,600.00 as at the date of the hearing, April 28, 2020.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence of the landlord that rent in the amount of \$1,800.00 was payable on the first of each month. I accept the evidence that the tenant failed to pay the full monthly rent for several months and that there is an arrear of \$3,600.00 as at the date of the hearing. Accordingly, I find that the landlord is entitled to a monetary award in that amount.

As the landlord was successful in their application they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security and pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,500.00, allowing the landlord to recover the rental arrear and filing fee for this application and retain the security and pet damage deposit for this tenancy.

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 28, 2020

Residential Tenancy Branch