



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenant.

The landlords' application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Only the landlords appeared.

Tenant's application

This matter was set for hearing by telephone conference call at 9:30 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord.

Further, I note the tenants named themselves both as the applicants and the respondents in their application. Therefore, their application could not proceed in any event, as it did not name the proper respondents. As the tenants did not attend the hearing by 9:40 A.M, I dismiss their application without leave to reapply.

Landlords' application

Preliminary and Procedural matter

In this case, the landlords have listed two tenants as respondents in their application GH and KH. GH did not sign the tenancy agreement. I find GH is not a tenant under the Act. GH is an occupant who was living with the tenant. Therefore, I have removed GH from the style of cause. This hearing proceeded against the tenant KH.

The landlords attended the hearing. As the tenant KH, did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlords testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on March 27, 2020, a Canada post tracking number was provided as evidence of service.

The landlords stated that the package was successfully delivered on March 30, 2020, and it was found inside the rental unit, after the tenant had vacated.

I find that the tenant was served on March 30, 2020, in accordance with the Act.

At the outset of the hearings the landlords stated that they do not need an order of possession as the tenant vacated on April 3, 2020.

At the outset of the hearing the landlord requested to amend their application to include loss of rent for April 2020. As rent is the most basic term of a tenancy agreement, I find, pursuant to section 62(3) that the landlords' application is amended to include a claim for loss of April 2020 rent.

Issue to be Decided

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

Background and Evidence

The tenancy began on September 1, 2019. Rent in the amount of \$2,400 was payable on the first of each month. The tenant paid a security deposit of \$1,200.00. The tenancy ended on April 3, 2020.

The landlords testified that a move-in condition inspection report was completed. The landlords stated that tenant did not participate in the move-out condition inspection as they failed to show up for the scheduled appointment. The landlords stated that there were some deficiencies. The tenant did not provide a forwarding address.

The landlords testified that the tenant was in rent arrears for February 2020, as there was \$100.00 outstanding in rent. The landlords stated that the tenant did not pay any rent for March 2020 and the tenant was still living in the rental unit on April 1, 2020, when rent was due and owing. The landlords seek to recover unpaid rent in the amount of \$4,900.00.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

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.*

...

The evidence of the landlords was the tenant did not pay all rent owed for February 2020 and paid no rent for March and April 2020. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlords. Therefore, I find the landlords are entitled to recover unpaid rent in the amount of **\$4,900.00**.

I find that the landlords have established a total monetary claim of **\$5,000.00** comprised of the above described amounts and the \$100.00 fee paid for this application. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

In this matter, the tenant did not attend the scheduled move-out condition inspection. I find the tenant has extinguished the right to the return of the deposit pursuant to section 36 of the Act. Therefore, I have not offset this amount with unpaid rent.

Conclusion

The landlords are granted a monetary order. The tenant's application is dismissed.

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 25, 2020