



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing 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 and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 26 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

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 landlord's paper application only, not any participation by the tenants. An "interim decision," dated March 18, 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 landlord was required to serve the interim decision and notice of reconvened hearing to the tenants. The landlord testified he personally served each tenant with the above documents on March 23, 2020. He said that his roommate witnessed the service. The landlord said that his roommate could testify to this fact, but when he went to call him during the hearing, he was busy and never appeared to provide testimony. In accordance with section 89 of the *Act*, I find that both

tenants were personally served with the interim decision and notice of reconvened hearing on March 23, 2020.

The interim decision indicates that the landlord personally served the tenants with the landlord's original application for dispute resolution by direct request on March 15, 2020. The interim decision states that the landlord provided two signed proofs of service from a witness and the tenants to confirm same. In accordance with section 89 of the *Act*, I find that both tenants were personally served with the landlord's original application on March 15, 2020.

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

Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include April 2020 rent of \$2,300.00. 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 landlord's claim for increased rent, despite the fact that they did not attend this hearing.

I do not amend the landlord's application to include a future loss of rent from May 2020 forward and a loss of utilities of \$722.11. The landlord could not confirm when he served the tenants with his amendment, dated April 9, 2020, to include these new claims that were not part of his original direct request application. Further, the landlord's claims for a loss of future rent is premature, as the tenants just moved out on the day before this hearing, April 23, 2020. I notified the landlord that he was at liberty to file these claims in a future application.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee paid for this application?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on June 15, 2019 and ended on April 23, 2020. Monthly rent in the amount of \$2,300.00 was payable on the first day of each month. A security deposit of \$1,150.00 and a pet damage deposit of \$1,150.00 were paid by the tenants and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The landlord seeks a monetary order of \$6,900.00 for unpaid rent and the \$100.00 filing fee paid for this application. The landlord claimed that the tenants failed to pay rent of \$2,300.00 for each of February, March and April 2020, totaling \$6,900.00. He said that the tenants paid full rent of \$2,300.00 for January 2020 on January 25, 2020 in the amount of \$900.00 and on February 3, 2020 in the amount of \$1,400.00.

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 \$2,300.00 for each month of February, March and April 2020. Therefore, I find that the landlord is entitled to \$6,900.00 in rental arrears from the tenants.

The landlord continues to hold the tenants' security and pet damage deposits totalling \$2,300.00. Although the landlord did not apply to retain the deposits, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' entire security and pet damage deposits totalling \$2,300.00, in partial satisfaction of the monetary award. No interest is payable on the deposits over the period of this tenancy.

As the landlord was partially successful in this application, I find that he is entitled to recover the \$100.00 application filing fee from the tenants.

Conclusion

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

I order the landlord to retain the tenants' entire security and pet damage deposits totaling \$2,300.00.

I issue a monetary order in the landlord's favour in the amount of \$4,700.00 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: April 24, 2020

Residential Tenancy Branch