



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on February 7, 2020 seeking an order of possession of the rental unit, to recover the money for unpaid rent, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on March 12, 2020. In the conference call hearing I explained the process and provided each attending party the opportunity to ask questions.

The landlord’s application in this matter was first a direct request process, then scheduled as a participatory hearing because there was no documented information on the terms of the tenancy agreement, which is requirement in the direct request process. This office reverted the matter to the participatory hearing upon determining that the matter could not proceed as the landlord originally requested.

The agent for the landlord confirmed service of the Notice of Dispute Resolution to the tenant on February 10, 2020, by way of registered mail, providing the tracking number. This included documentary evidence they provided for this hearing.

In the interim period between the direct request proceeding and this hearing, the landlord completed and filed a ‘Landlord’s Form to Amend a Dispute Resolution Application’ on February 10, 2020. This adds two months’ rent amounts to the total, for February and March 2020, at \$1,430.00 each. At the time of the hearing the unit was undergoing repairs and was not occupied – this is the basis for the claim for the March rent amount.

In the hearing, the representative for the landlord presented the details of the monetary claim. They added that the tenants moved out of the rental unit on February 15, 2020. They added a claim against the security deposit, requesting to retain the \$650.00 amount.

Additionally, the representative for the landlord submitted that a fine of \$500.00 is dictated by the *Act* and asked for this amount to be added to the total monetary claim. The rep presented that this is added as an addendum, where in these circumstances “a fine of \$500.00 will apply.”

Preliminary Matter

On January 1, 2020, the tenant gave the landlord notice that he was leaving the rental unit. The tenant did not state if this was done in writing, and the tenant did not state if he gave a specific end of tenancy date to the landlord at that time. The landlord and tenant both acknowledged that the tenant occupied the unit until February 15.

The tenant moved out of the unit on February 15, 2020; therefore, I do not grant an Order of Possession. The tenancy ended on that date. By Residential Tenancy Rule of Procedure 2.3, I amend the landlord's application to exclude this matter.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section. The landlord applied for an order of possession pursuant to the 10 Day Notice given to the tenants on January 10, 2020, and a monetary order for \$1,430.00 that represents unpaid rent for the month of January 2020.

The landlord and tenant both agreed on the terms of the tenancy agreement that was in place. It provides that the tenancy started on July 1, 2019. This was put in place when a new landlord acquired management of the building. The agent for the landlord described the agreement as a 6-page document, with a 1-page addendum. This sets out the monthly rent at \$1,430.00, payable on the first day of each month. The security deposit amount is \$650.00. The tenant stated that they lived there for 6 years starting on September 8, 2013.

The landlord submitted the following evidentiary material:

- A copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), dated January 10, 2020, for \$1,430.00 in unpaid rent. This 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for dispute resolution, or the tenancy would end on the vacancy date indicated on the 10 Day Notice, January 20, 2020.
- A copy of the Proof of Service of the 10 Day Notice signed February 7, 2020 --an agent representing the landlord sent this document to the tenant’s address on January 10, 2020 via Canada Post Registered Mail. The agent provided a copy of the Canada Post customer tracking label as proof of service. A separate copy of this mail went to each of the tenants occupying the unit at that time.
- A copy of the Direct Request worksheet that shows the rent amount owing.

The tenant acknowledged their withholding of the rent amount for January and February. They stated this is because the cable and internet amount of \$230.00 was included in the amount of rent prior to July 1, 2019. When the new landlord began management of the building at that time, the provision of this service was not provided for in the rental amount, and by July 2, the provision of cable and internet ceased.

The tenant gave their recollection of the July 1, 2010 tenancy agreement, noting that there was no indication of these services being included in the monthly rent amount. Specifically, the box on the list of services provided was not checked, indicating no internet and no cable. The tenant stated they learned of this when reviewing the agreement after learning of the change to the cable/internet service; moreover, they did not notice this at the time they signed the agreement on July 1, 2019. In the tenant’s opinion, this amounts to an illegal rent increase.

In the hearing the tenant stated that the landlord offered another cable and internet package which was substantially lower in performance and capability than what they had become accustomed to. On January 1, 2020, he gave the landlord notice that he was leaving the rental unit. The tenant did not state if this was done in writing, and the tenant did not state if he gave a specific end of tenancy date to the landlord at that time.

The tenant provided their rationale for withholding the rent amount for the month of January, adding up the amount of the cable and internet cost, at \$230.00 for July through to December 2019, totalling \$1,380.00. Concerning the \$650.00 amount of security deposit that the tenant paid on July 1, 2019, the tenant states the landlord should retain this as the payment for the time they occupied the unit to February 15.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on January 15, 2020, five days after the landlord posted it via registered mail.

I accept the evidence before me that the tenant failed to pay the rent owed in full by January 20, 2020, within five days granted under 46(4) of the *Act* and did not dispute the 10 Day Notice within that five-day period. The tenant acknowledged this non-payment of rent during the hearing, via oral testimony.

In the hearing the tenant stated they did not pay the rent for the month of January, giving the landlord notice of their intent to end the tenancy. They also confirmed that they did not pay any amount after that for the month of February and vacated the unit by February 15, 2020.

Section 26 of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. While the tenant indicated that they did not pay rent because the landlord had discontinued cable and internet, there is no provision under the *Act* that would allow the tenant to unilaterally decide to withhold rent payments for an amount of the cost of these services. The tenant would be required to obtain an order from an Arbitrator for such a deduction, had the landlord changed the terms of a tenancy agreement to exclude these services where they had been previously provided.

Based on this testimony, and in consideration of the evidence presented by the landlord, I find there is reason under the *Act* for the provision of a monetary order. To determine the amount, I refer to the Residential Tenancy Policy Guideline 3 which provides a statement of the policy intent of the *Act*. It states in part:

In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.

With this consideration, I find the tenant is liable for the rental amounts for the months of January and February 2020. The end of tenancy would occur at the end of February with proper notice from the tenant, and the intent and purpose of the *Act* is to return the landlord to the same position as if the tenant had not breached the agreement.

In consideration of the guideline, I find the landlord is not entitled to the March rental amount. The timeline of the tenant moving in February is not reasonable to the landlord listing the vacancy of the unit, finding new tenants, and making the unit presentable for the start of a new tenancy in the near future. This is a timeframe of two weeks and is not an exceptionally challenging situation for the landlords to secure a tenancy for the unit, thereby keeping the same position as if the tenant had not breached the agreement. Moreover, there is no evidence of the tenant causing damage or other issues with the unit that would not or could not be repaired by the start of March.

Also, in line with the guideline, I find the landlord is entitled to the March rental amount. The timeline of the tenant moving in February is not reasonable to the landlord listing the vacancy of the unit, finding new tenants, and making the unit presentable for the start of a new tenancy in the very near future. This is a timeframe of two weeks and presents a challenging situation for the landlords to maintain a tenancy for the unit, thereby keeping the same position as if the tenant had not breached the agreement.

Concerning the security deposit in the amount of \$650.00, I find the landlord and tenant agree on this amount. There is no documentary evidence before me in the form of a tenancy agreement; however, the landlord and tenant did not contradict each other on this amount. The landlord did not make a specific claim concerning the security deposit amount; however, it is the position of the tenant that this \$650.00 amount covers the one-half February rent amount.

Section 72(2) of the *Act* allows for an offset of the security deposit amount, and this amount “may be deducted . . . (b) in the case of a payment from a tenant to a landlord, from any security deposit. . . due to the landlord.” Utilizing this provision, I therefore apply the security deposit owed to the tenant toward the compensation total amount.

In sum, the compensation granted is as follows:

- \$1,430 for the amount of January 2020 rent
- \$1,430 for the amount of February 2020 rent
- \$ 650.00 security deposit amount

Total: \$2,210.00

Additionally, as the landlord was successful in this application, I grant the landlord \$100.00 for recovery of the filing fee for this hearing.

Conclusion

Pursuant to sections 26, 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2,310.00.

Additionally, as the landlord was successful in this application, I grant the landlord \$100.00 for recovery of the filing fee for this hearing.

The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants 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 *Act*.

Dated: April 6, 2020

Residential Tenancy Branch