



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on February 03, 2020 (the "Application"). The Application went through the direct request process but was adjourned for a hearing. The Landlord applied for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, to recover unpaid rent and for reimbursement for the filing fee.

The Landlord attended the hearing. Nobody attended the hearing for the Tenant. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

Further to the written materials submitted, the Landlord confirmed at the hearing that the Tenant vacated the rental unit February 18, 2020. The Landlord no longer sought an Order of Possession given this. The Landlord sought unpaid rent for January and February, to keep the security deposit towards unpaid rent and reimbursement for the filing fee.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified that the hearing package and evidence were sent by registered mail to the rental unit on February 09, 2020. The Landlord had submitted the customer receipt for this with Tracking Number 1 on it. I looked Tracking Number 1 up on the Canada Post website which shows notice cards were left February 11 and 17, 2020. It shows the package was unclaimed.

Based on the undisputed testimony of the Landlord, customer receipt and Canada Post website information, I am satisfied the Tenant was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “*Act*”). Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the package February 14, 2020. I am satisfied the package was served in sufficient time to allow the Tenant to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

I note at the outset that the rental unit address on the written materials is not all the same. The Landlord explained that the street name of the rental unit address had been changed. The Landlord confirmed the correct rental unit address is shown on the Application. The Landlord confirmed all materials relate to the same address being the rental unit address.

A written tenancy agreement was submitted as evidence. The tenancy started November 15, 2019 and was a month-to-month tenancy. Rent was \$1,850.00 per month. The Landlord confirmed rent was due on the first day of each month. The Tenant paid a \$925.00 security deposit. The agreement was signed by the Landlord and Tenant.

The Landlord testified that the Tenant did not pay January or February rent. The Landlord confirmed \$3,700.00 in rent is outstanding. The Landlord testified that the Tenant did not have authority under the *Act* to withhold rent.

The Landlord testified that the Tenant was served with a 10 Day Notice for the January unpaid rent, once by posting it on the door of the rental unit and once by registered mail.

The Landlord submitted a 10 Day Notice dated January 21, 2020 for \$1,850.00 in unpaid rent due January 01, 2020. The Landlord submitted a letter to the Tenant about unpaid rent and the 10 Day Notice.

The Landlord indicated in the written materials that the rental unit was re-rented for April 01, 2020.

Analysis

Section 7(1) of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

Section 26(1) of the *Act* states:

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.

Section 46 of the *Act* allows a landlord to end a tenancy where tenants have failed to pay rent.

Based on the undisputed testimony of the Landlord and written tenancy agreement, I am satisfied the Tenant was required to pay \$1,850.00 in rent each month by the first day of each month.

Based on the undisputed testimony of the Landlord, 10 Day Notice and letter, I am satisfied the Tenant failed to pay January rent. Based on the undisputed testimony of the Landlord, I am satisfied the Tenant failed to pay February rent.

Based on the undisputed testimony of the Landlord, I am satisfied the Tenant did not have authority under the *Act* to withhold rent for January or February. There is no evidence before me that the Tenant did.

I am satisfied the Landlord is entitled to recover \$3,700.00 in unpaid rent.

I note that I allow the Landlord to amend the Application to recover unpaid rent for both January and February pursuant to rule 4.2 of the Rules of Procedure.

I acknowledge that the Tenant vacated the rental unit February 18, 2020. I am satisfied the Landlord is entitled to the full rent amount for February given rent is due on the first day of the month, given how late in February the Tenant vacated and given the Landlord did not re-rent the unit until April.

As the Landlord was successful in this application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

The Landlord is therefore entitled to monetary compensation in the amount of \$3,800.00. Pursuant to section 72(2) of the *Act*, the Landlord can keep the \$925.00 security deposit. I issue the Landlord a Monetary Order for the remaining \$2,875.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to compensation in the amount of \$3,800.00. The Landlord can keep the \$925.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$2,875.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 17, 2020

Residential Tenancy Branch