



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on February 02, 2020 (the “Application”). The Landlords sought an Order of Possession pursuant to section 56 of the *Residential Tenancy Act* (the “Act”) and reimbursement for the filing fee. The Application named the Tenant and Tenant B.S (the “Tenants”).

The Landlords uploaded an amendment dated February 18, 2020 (the “Amendment”). The Amendment relates to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a monetary claim for \$5,435.00.

The Landlords attended the hearing. The Tenant attended the hearing. The Tenant said she was not appearing for Tenant B.S.

The Landlords said Tenant B.S. vacated the rental unit March 01, 2020. The Tenant said she vacated the rental unit at the end of November. Given the Tenants had vacated, the Landlords withdrew the requests for an Order of Possession. The Landlords proceeded with the Application and Amendment in relation to the monetary claim and reimbursement for the filing fee.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenants did not. I addressed service of the hearing package, Amendment and Landlords’ evidence.

The Tenant confirmed receipt of the hearing package for the Application. The Tenant confirmed receipt of copies of returned cheques. The Landlords confirmed this was the

only documentary evidence they were relying on at the hearing. The Tenant said she did not receive the Amendment. I asked the Landlords about service of the Amendment; however, the Tenant confirmed she was prepared to deal with the issue of unpaid rent at the hearing and therefore I proceeded to hear the Application and Amendment as it related to the Tenant.

I asked the Landlords further about service of the Amendment on Tenant B.S. The Landlords testified that the Amendment was sent by registered mail February 10, 2020 and provided tracking numbers for this. The Landlords also testified that the Amendment was posted to the door of the rental unit.

The Landlords were given ample time to prove service of the Amendment on Tenant B.S. The Landlords continually referred to the registered mail packages sent February 10, 2020 and posting it to the door.

The Application was for an Order of Possession pursuant to section 56 of the *Act* and reimbursement for the filing fee. The service requirements for the Application were different than the service requirements for the Amendment. The Application did not include a monetary claim and the service requirements are set out in section 89(2) of the *Act*. The Amendment added a monetary claim and therefore had to be served in accordance with section 89(1) of the *Act* which states:

89 (1) An application for dispute resolution...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

I was not satisfied the Amendment was sent to Tenant B.S. by registered mail February 10, 2020. The Amendment is dated February 18, 2020. It does not make sense that the Landlords would have served the Amendment February 10, 2020, eight days before the document was dated. The documentary evidence submitted is not sufficient to show that the Amendment was sent to Tenant B.S. by registered mail on February 10, 2020. The Landlords submitted copies of registered mail receipts and photos of envelopes, none of which show the contents of the packages sent. In the absence of further evidence showing the Amendment dated February 18, 2020 was sent to Tenant B.S. February 10, 2020, I was not satisfied it was.

Posting the Amendment on the door of the rental unit was not sufficient as this does not comply with section 89(1) of the *Act*.

Tenant B.S. did not appear at the hearing. The Amendment is the only document that would have put Tenant B.S. on notice that the Landlords were going to seek monetary compensation at the hearing as the Application was not for monetary compensation. Given I was not satisfied of service of the Amendment on Tenant B.S., I told the Landlords I would not allow them to proceed against Tenant B.S. in relation to the monetary claim. I told the Landlords they could withdraw the Application and Amendment and start the process again or proceed against the Tenant given she attended and confirmed she was prepared to address the issue of unpaid rent. The Landlords confirmed they wanted to proceed against the Tenant. Tenant B.S. has been removed from the style of cause.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the written tenancy agreements, copies of the returned cheques and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to recover unpaid rent?
2. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started November 11, 2019 and was a “periodic tenancy commencing...November 11, 2019 and expiring on May 30, 2020”. Rent was \$925.00 per month due by the first day of each month. Term 12 in the agreement states, “Any NSF cheque charges incurred by the landlord will be at the cost of the tenant.” Term 42 of the agreement states, “The Tenant will be charged an additional amount of \$25.00 for each NSF check or checks returned by the Tenant’s financial institution plus any other costs incurred by the Landlord from their financial institution.”

A second copy of the tenancy agreement was submitted. It seems to indicate the tenancy was for a fixed term of six months.

The Tenant testified that she let Landlord S.M. know when she vacated the rental unit but did not give written notice to the Landlords.

The Landlords testified as follows. The Tenants failed to pay \$610.00 for November rent. The Tenants failed to pay rent for December to February. The Tenants did not pay a security deposit. The Tenants did not have authority under the *Act* to withhold rent. They are relying on the returned cheques in evidence.

The Landlords also sought \$25.00 for the returned cheques from November to February.

The Tenant agreed \$610.00 for November rent was not paid. The Tenant agreed no rent was paid from December to February. The Tenant agreed no security deposit was paid. The Tenant agreed the Tenants did not have authority under the *Act* to withhold rent. The Tenant agreed the Tenants owe \$25.00 for the returned cheques.

The Landlords submitted Returned Item Notices for cheques for the security deposit, November rent, December rent and January rent.

Analysis

The Tenants were co-tenants under the tenancy agreement. Policy Guideline 13 outlines the rights and responsibilities of co-tenants and states in part:

...Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect...

(emphasis added)

Section 7 of the *Act* states that, if tenants do not comply with the *Act*, regulations or their tenancy agreement, the non-complying tenants must compensate the landlord for loss that results.

Section 26(1) of the *Act* requires tenants to pay rent in accordance with their tenancy agreement unless they have a right to withhold rent under the *Act*.

I am satisfied based on the written tenancy agreements that this was a fixed term tenancy ending May 30, 2020. I am not satisfied the tenancy was ended in accordance with the *Act* prior to March 01, 2020 as the Tenant only gave verbal notice that she was vacating and Tenant B.S. remained in possession of the rental unit until March 01, 2020. I find both Tenants are responsible for unpaid rent from November to February.

Based on the written tenancy agreements and testimony of the parties, I am satisfied the Tenants were required to pay \$925.00 in rent each month by the first day of each month.

Based on the testimony of the parties and copies of the returned cheques, I am satisfied the Tenants failed to pay \$3,385.00 in rent from November to February.

Based on the testimony of the parties, I am satisfied the Tenants did not have authority under the *Act* to withhold rent.

I am satisfied the Landlords are entitled to recover \$3,385.00 in unpaid rent for November to February.

Section 7 of the *Residential Tenancy Regulation* states:

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I am satisfied term 42 of the written tenancy agreement outlines a \$25.00 charge for returned cheques. Based on the copies of the returned cheques and testimony of the parties, I am satisfied the rent cheques for November to February were returned due to insufficient funds. I am satisfied the Landlords are entitled to recover \$100.00 for the returned cheques pursuant to term 42 in the tenancy agreement.

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

The Landlords are entitled to monetary compensation in the amount of \$3,585.00. Pursuant to section 67 of the *Act*, I issue the Landlords a Monetary Order in this amount.

Conclusion

The Landlords are entitled to monetary compensation in the amount of \$3,585.00 and I issue the Landlords a Monetary Order in this amount. 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 14, 2020

Residential Tenancy Branch