



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, 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, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 27 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.

The landlord testified that he sent a copy of the landlord's application for dispute resolution hearing package to the tenant by way of registered mail on March 16, 2020 to the rental unit where the tenant was still residing. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on March 21, 2020, five days after its registered mailing.

At the outset of the hearing, the landlord confirmed that the tenant vacated the rental unit on March 25, 2020, 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 March 2020 rent of \$2,575.00. I find that the tenant is aware that rent is due as per her tenancy agreement. Therefore, the tenant

knew or should have known that by failing to pay her rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that she did not attend this hearing.

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 April 1, 2019 and ended on March 25, 2020. Monthly rent in the amount of \$2,575.00 was payable on the last day of each month, in advance. A security deposit of \$1,287.50 was paid by the tenant and the landlord agreed to use the deposit towards September 2019 rent. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The landlord seeks a monetary order of \$11,920.00 for unpaid rent and the \$100.00 filing fee paid for this application. The landlord claimed that the tenant failed to pay rent of \$2,575.00 for each of December 2019, January 2020, February 2020, and March 2020, totalling \$10,300.00. He said that the tenant also failed to pay rent of \$1,125.00 for October 2019 and \$495.00 for November 2019.

The landlord confirmed that the tenant made payments totalling \$2,080.00 for November 2019. He said that the tenant made a payment of \$1,000.00 for December 2019 rent, which he returned to the tenant to help her out with money. These payments have been included in the above outstanding balances owed for rent.

Analysis

As per section 26 of the *Act*, the tenant is required to pay rent on the date indicated in the tenancy agreement, which is the last day of each month in advance. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy 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 tenant failed to pay rent totalling \$11,920.00 from October 2019 to March 2020. Therefore, I find that the landlord is entitled to \$11,920.00 in rental arrears from the tenant.

The landlord applied the tenant's security deposit of \$1,287.50 towards rent for September 2019, so it is not available to use against the above monetary order for unpaid rent.

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

Conclusion

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

I issue a monetary order in the landlord's favour in the amount of \$12,020.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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: May 15, 2020

Residential Tenancy Branch