



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNDS, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security and pet deposits. Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves. The landlord was accompanied by her agent.

As both parties were in attendance, I confirmed service of documents. The landlord confirmed receipt of the tenant's evidence and agreed that he had served his evidence on the tenant just the day before the hearing. I find that the landlord was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Rule 3 of the *Residential Tenancy Branch Rules of Procedure* addresses how to serve the application and the applicant's evidence. Rule 3.1 (d) states that together with a copy of the application for dispute resolution, the applicant must serve each respondent with copies of any evidence accepted by the Residential Tenancy Branch with the application or whatever is available to be served.

The purpose of serving evidence to the respondent is to notify the person being served of matters relating to arbitration and to provide the person with an opportunity for rebuttal.

In this case, the landlord did not have his evidence available to be filed along with his application or at the time he served the notice of hearing on the tenant. Rule 3.5 states that if documents are not available to be filed with the application but which the applicant intends to rely upon as evidence at the hearing, these documents must be received at the Residential Tenancy Branch Office at least five days before the hearing and must be served on the tenant as soon as possible.

The landlord admitted that he had served his evidence on the tenant on the night before this hearing and provided no reason why he could not have served copies of these documents to the Residential Tenancy Branch and to the tenant, in a timely manner, which would have given the tenant an opportunity to respond to the landlord's evidence.

Rule 11.5 (b) states that an Arbitrator may refuse to accept evidence of one party if the Arbitrator determines that the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice. Accordingly, the landlord's evidence was not used in the making of this decision.

The tenant testified that he had moved out on April 15, 2020 and the landlord confirmed that he had possession of the rental unit and therefore withdrew his application for an order of possession. Accordingly, this hearing only dealt with the landlord's monetary claim for unpaid rent and the filing fee.

Issues to be decided

Is the landlord entitled to a monetary order to recover unpaid rent and filing fee?

Background and Evidence

The tenancy started in September 2018. The monthly rent was \$3,553.00 due in advance on the first of each month. Prior to moving in the tenant paid a security deposit and pet deposit of \$1,700.00 each for a total of \$3,400.00.

The tenant's rent cheque for February 2020 was returned to the landlord. The tenant agreed that his cheque bounced due to his bank account being compromised. The tenant stated that he paid rent for February in cash but could not recall the date he paid and had no proof of payment. The landlord denied having received rent for February.

The landlord testified that the tenant did not pay rent for March 2020 and on March 02, 2020, the landlord served the tenant with a 10-day notice to end tenancy for unpaid rent. The tenant did not dispute the notice. The tenant stated that he paid rent for March 2020, in cash but again did not have any proof of payment. The tenant agreed that he did not pay rent that was due on April 01, 2020 and moved out on April 15, 2020.

The landlord is applying for a monetary order in the amount of \$10,659.00.00 for unpaid rent plus \$100.00 for the filing fee.

Analysis

Based on the sworn testimony of the both parties, I accept the landlord's evidence in respect of the claim and prefer his testimony. I find on a balance of probabilities that it is more likely than not that the tenant did not pay rent owed for the months of February, March and April 2020.

Accordingly, I find that the landlord is entitled to \$10,659.00 for unpaid rent. Since the landlord has proven his case, he is also entitled to the filing fee of \$100.00.

I order that the landlord retain the security and pet deposits of \$3,400.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$7,359.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for **\$7,359.00**.

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 26, 2020

Residential Tenancy Branch