



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 was scheduled as a result of an interim decision dated April 8, 2020 adjourning the landlord's application for Direct Request pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent pursuant to section 46 and 55 of the *Act*;
- a monetary compensation for unpaid rent pursuant to section 67 of the *Act*;
- recovery of the filing fee pursuant to section 72 of the *Act*.

The landlord AA attended the hearing via conference call. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions.

The landlord confirmed that he had served the application for Dispute Resolution and evidentiary package by personal service on March 20, 2020 due to the emergency powers. Pursuant to sections 88 & 89 of the *Act* the tenant is found to have been served with all the documents.

The tenant did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant codes for the landlord had been provided.

Rule of Procedure 7.3 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the Arbitrator may conduct the Dispute Resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. I proceeded with the hearing.

The hearing was originally scheduled in response to the landlord's application for a Direct Request Proceeding but was reconvened to a participatory hearing based on the fact that the Adjudicator required clarification on the shared facilities with the landlord.

Preliminary matter - Notice # 1

The landlord served the 10 Day Notice to End Tenancy.(the Notice) in February 2020 however, this Notice was not served on the tenant as required by section 88 of the *Act* or sufficiently served pursuant to section 71 of the *Act*; in addition to that this Notice filed in evidence is illegible. This notice is cancelled.

Preliminary Matter - Amendment

In the original monetary worksheet, the landlord was seeking the sum of \$1,800.00 for owed rent for the months of February and March 2020. The landlord affirmed that the tenant abandoned the rental unit on April 21, 2020. In the hearing the landlord sought to increase the monetary claim to include the rent owed for April 2020. (Rent was \$900.00 monthly).

| ITEM | AMOUNT |
|--------------------|------------|
| February 2020 rent | \$900.00 |
| March 2020 rent | \$900.00 |
| April 2020 | \$900.00 |
| Total Due | \$2,430.00 |

The Residential Tenancy Branch Rules of Procedure rule 4.2 states that an application may be amended at the hearing, in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, if an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the landlord is seeking compensation for unpaid rent that has increased since he first applied for dispute resolution; I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant.

Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include the rent for April 2020. The total amount sought at this hearing is for the sum of \$2,700.00

Issue(s) to be Decided

Is the landlord entitled to an order of possession 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

This tenancy commenced on January 9, 2020 as a fixed term tenancy. The landlord testified that monthly rent in the amount of \$900.00 was payable on the first day of each month. The landlord testified that the tenant paid a security deposit of \$450.00 at the beginning of the tenancy which is held in Trust by the landlord.

The landlord testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), dated March 10, 2020 by personally serving the Notice on the tenant. The tenant refused to take the Notice, and this was witnessed by a third party.

The landlord affirmed that the tenant was sharing the basement with two other tenants. He testified that the kitchen and bathroom was shared between the residents. The landlord affirmed that he lived upstairs with his family and did not share any facilities with the tenant.

The Notice indicates an effective move-out date of March 20, 2020. The grounds to end the tenancy cited in the Notice were:

- 1) the tenant failed to pay the rent in the amount of \$ 1,800.00 that was due on February and March 1, 2020.

The landlord testified the tenant failed to pay rent for the months of February, March and April 2020. The landlord testified that he wished to retain the security deposit for the sum of \$450.00 in partial satisfaction for the owed rent.

Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46(5) says that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Based on the landlord's testimony and the notice dated March 10, 2020. I find that the tenant was served with the stated Notice to End Tenancy for unpaid rent. There is no evidence before me that the tenant paid the outstanding rent or filed an application to dispute the Notice within 5 days of its receipt. Therefore, I find the tenant is conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Sec. 57 A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$450.00 in part satisfaction of their monetary claim against the tenant.

| ITEM | AMOUNT |
|---|-------------------|
| Notice filed by landlord of rent owed. | \$1,800.00 |
| April 2020 rent (overholding) | \$630.00 |
| Less security deposit | (\$450.00) |
| Total monetary amount to landlord. | \$1,980.00 |

Pursuant to section 67 of the Act, I grant the landlord the monetary award of \$1,980.00 representing the rent from February to April 2020, deducting the security deposit.

As the landlord has been successful in this application, I find that he is entitled to recover the \$100.00 reimbursement of the filing fee pursuant to section 72 of the *Act*.

Conclusion

I grant a monetary order for the sum of \$ 2,080.00 for the unpaid rent, including the \$100.00 filing fee pursuant to section 67 and 72 of the *Act*.

The landlord is provided with this Order in the above terms and 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: June 05, 2020

Residential Tenancy Branch