



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNR AAT
 LL: OPR-DR OPRM-DR FFL

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent and utilities pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; and
- An order to allow access to the rental unit pursuant to section 70.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord appeared and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the notice of application and evidence by registered mail sent on September 18, 2020. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord’s materials on September 23, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

At the outset of the hearing the landlord testified that this tenancy has ended and withdrew the portion of their application seeking an Order of Possession.

Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

Is the landlord entitled to a monetary award as sought?

Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. The monthly rent for this periodic tenancy was \$1,500.00 payable on the first of each month.

Pursuant to the tenancy agreement the tenant is also obligated to pay strata fines incurred. A security deposit of \$750.00 is held by the landlord.

The tenant failed to pay full rent for the months of August and September 2020 as well as incurring strata fines during the tenancy and there is an arrear of \$1,950.00 as at the date of the hearing.

Analysis

The tenant did not attend the hearing which was scheduled by conference call at 9:30am. Rule 7.3 of the Rules of Procedure provides that:

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.

Consequently I dismiss the tenant's application without leave to reapply.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the evidence of the landlord that there was a valid tenancy agreement between the parties wherein the tenant was obligated to pay rent in the amount of \$1,500.00 and any fines imposed by the strata corporation for the building. I accept the evidence that the tenant failed to pay the required amounts and there is an arrear of \$1,950.00 as at the date of the hearing. Accordingly, I issue a monetary award in the landlord's favour in that amount.

As the landlord's application was successful, they are also entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's full security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,300.00, allowing the landlord to recover the unpaid rent, strata fines and filing fee and retain the security deposit for this tenancy. 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: October 16, 2020

Residential Tenancy Branch