



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord file 1: OPRM-DR, FFL
For the landlord file 2: OPN, FFL
For the tenant: CNR

Introduction

This hearing dealt with a cross application. The landlord's application file 1 (the complete file number is on the cover page of this decision) pursuant to the Residential Tenancy Act (the Act) is for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("the Notice ") pursuant to sections 46 and 55;
- a monetary order for compensation for unpaid rent, pursuant to section 67;
- an authorization to recover the filing fee for this application, under section 72.

The landlord's application file 2 (the complete file number is on the cover page of this decision) pursuant to the act is for:

- an order of possession under a tenant's notice to end tenancy, pursuant to sections 45 and 55;
- an authorization to recover the filing fee for this application, under section 72.

The tenant applied for cancellation of the landlord's 10 day Notice to End Tenancy for unpaid Rent or Utilities, pursuant to section 46 of the Act.

I left the teleconference connection open until 9:53 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. 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. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, and I were the only ones who had called into this teleconference.

Preliminary Issue - Service of landlord's application file 1 documents

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on October 23, 2020, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on October 28, 2020, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue - Service of landlord's application file 2 documents

The landlord affirmed she did not serve the notice of hearing to the respondent in any of the ways described in sections 88 and 89 of the Act. The hearing cannot proceed fairly when the respondent has not been notified of the hearing.

Based on the foregoing, I dismiss the landlord's application file 2 with leave to reapply. Leave to reapply is not an extension of timeline to apply.

As the landlord was not successful, she is not entitled to recover the filing fee.

Preliminary Issue – Tenant's application

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

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.

Accordingly, in the absence of any attendance at this hearing by the tenant, I order the tenant's application dismissed without leave to reapply.

Preliminary Issue – Vacant Rental Unit

At the outset of the hearing the landlord informed me the tenant vacated the rental unit on November 01, 2020.

The application for an order of possession is moot since the tenancy has ended and the tenant left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

Issues to be Decided

Is the landlord entitled to:

1. receive a monetary award for unpaid rent?
2. an authorization to recover the filling fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate her application.

The landlord affirmed the tenancy stated on September 01, 2018 and ended on November 01, 2020. Monthly rent of \$1,700.00 was due on the first day of the month. At the outset of the tenancy a security deposit of \$850.00 and a pet damage deposit of \$850.00 were collected. Tenant MD authorized the landlord to retain both deposits in writing on November 03, 2020 as compensation for damages in the rental unit. The tenancy agreement was submitted into evidence.

The landlord testified on October 01, 2020 tenant MD paid rent in the amount of \$800.00 and the respondent tenant did not pay the balance of rent in the amount of \$900.00. The landlord posted the Notice on the tenant's door on October 02, 2020. A copy of the Notice was submitted into evidence.

A direct request worksheet was submitted into evidence. The landlord is claiming for \$900.00 in unpaid rent for the month of October 2020.

Analysis

I find that the tenant agreed to a periodic tenancy and was obligated to pay the monthly rent in the amount of \$1,700.00 on the first day of each month. Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

Based on the landlord's undisputed testimony and the tenancy agreement, I find the tenant did not pay the full amount of rent in accordance with sections 26(1) and 45 of the Act and owes rent to the landlord in the amount of \$900.00 for October 2020.

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

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the landlord a monetary order in the amount of \$1,000.00.

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: December 07, 2020

Residential Tenancy Branch