



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR-PP, FFL, MNRL, CNR, LRE, FFT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlords pursuant to section 72.

The landlords and the landlord's counsel attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend.

At the outset, the landlords stated that the tenant had abandoned the rental unit without notice by sending the keys to the rental which were received on January 4, 2021. The landlords stated that the tenant as of the date of this hearing has not provided a forwarding address in writing. The landlords confirmed that an order of possession was no longer required as the tenant had abandoned the rental unit without notice. On this basis, the landlords' application for an order of possession was withdrawn. No further action was required.

The landlords confirmed the tenant was served with the original notice of hearing package and the submitted 8 document files via Canada Post Registered Mail on October 29, 2020. The landlords verbally provided the Canada Post Tracking number (noted on the cover of this decision) as confirmation of service.

I accept the undisputed affirmed evidence of the landlords and find that the tenant was properly served as per sections 88 and 89 of the Act.

The landlords also confirmed that the amendment to the application for a monetary claim of \$15,250.00 filed December 2, 2020 was served to the tenant via the tenant's counsel on December 7, 2020 by facsimile and email to the tenant's counsel's office.

The hearing concluded at 11:59am on the scheduled hearing date. At that time the tenant's application was dismissed without leave to reapply as the tenant failed to attend and put forth any submissions. The landlord confirmed receipt of the tenant's hearing package. Residential Tenancy Branch, Rules of Procedure, Rule 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.

In this case the tenant failed to attend the hearing and 59 minutes after the start of the scheduled hearing the tenant's application was dismissed without leave to reapply as the landlord was in attendance and ready to proceed.

The hearing shall proceed on the landlords' clarified monetary claim based upon the filed amendment dated December 2, 2020 for \$15,250.00 and a recovery of the \$100.00 filing fee.

During the hearing the landlord sought an order for substitute service for serving the Decision and Order upon the tenant via email. The landlord stated that the tenant failed to provide a forwarding address and that the email address for the tenant was last used in October 2020 by the tenant. I find based upon submissions of the landlord that all the provisions under section 71 of the Act regarding substitute service have not yet been met. *Residential Tenancy Guideline #12* deals with service of documents. With respect to substituted service the Guidelines state:

The party applying for substituted service must be able to demonstrate two things:

1. that the party to be served cannot be served by any of the methods permitted under the Legislation, and
2. that the substituted service is likely to result in the party being served having actual knowledge of what is being served

I find that the landlord has supplied insufficient evidence to show that the tenant will receive the documents being made against him in keeping with the principles of natural justice.

I find that the landlord seeks to obtain an order for substitute service via email by relying upon an email address last used with the tenant sometime in October 2020. The landlord has made no efforts to confirm that this email was still active. I also note during the hearing that service of the hearing package and evidence was made through the landlord's counsel office via facsimile and email to the tenant's counsel's office.

The landlord's application for substitute service is pre-mature and is dismissed with leave to reapply.

The landlord also seeks to make an application to preclude the tenant from making any future claims against the landlord. On this basis, the landlord's application is without merit or cause. This portion of the landlord's application is denied.

Issue(s) to be Decided

Are the landlord's entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the tenant, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

The landlord confirmed that monthly rent was \$2,750.00.

The landlords seek a clarified monetary claim of \$15,350.00 which consists of:

\$7,000.00	Unpaid Rental Arrears (April 2020 to July 2020)
\$2,750.00	Unpaid Rent, November 2020
\$2,750.00	Unpaid Rent, December 2020
\$2,750.00	Unpaid Rent, January 2021
\$15,250.00	Sub-Total
\$100.00	Filing Fee
\$15,350.00	Total

The landlord provided undisputed testimony that the tenant was in arrears of \$7,000.00 for the period of April to July 2020. The landlord submitted a copy of a completed Repayment Plan (RTB-14) dated August 26, 2020 which was emailed to the tenant (with no response) and again via Canada Post Registered Mail on August 26, 2020. The landlord stated that this package was confirmed received by the tenant on August 27, 2020 by Canada Post. The landlord provided the Canada Post Customer Receipt Tracking number as confirmation (noted on the cover of this Decision). The landlord further stated that the tenant failed to pay any rent for November 2020, December 2020 and January 2021 at \$2,750.00 per month. The landlord stated that the tenant vacated the rental unit without notice and was only advised when the keys were returned in the mail on January 4, 2021.

Analysis

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.

In this case, I accept the undisputed evidence of the landlord that the tenant is in rental arrears of \$15,250.00 which comprises of \$7,000.00 in rental arrears owed as a result of a served Repayment Plan and the further unpaid rent for November 2020, December 2020 and January 2021.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

I authorize the landlord to offset the \$15,350.00 claim against the \$975.00 security and \$300.00 pet damage deposits leaving a balance of \$14,075.00.

Conclusion

The landlord is granted a monetary order for \$14,075.00.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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: January 18, 2021

Residential Tenancy Branch