



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenant.

The landlords' application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on October 14, 2020.

Tenant's application

This matter was set for hearing by telephone conference call at 11:00 A.M on this date. The line remained open while the phone system was monitored for thirty minutes and the only participant who called into the hearing during this time was the landlords. Therefore, as the tenant did not appear to provide evidence on their application, I dismiss the tenant's application without leave to reapply.

Landlords' application

The landlords testified that they served the tenant with the Notice Hearing and Application for dispute resolution by registered mail on November 10, 2020. The landlords stated that the tenant was also aware of this matter as they had corresponded by email. I find the tenant was served five days after it was mailed in accordance with the Act.

The landlords stated they were unable to serve the tenant with their amended application for damages to the rental unit as the tenant had vacated the premise on November 21, 2020, without providing a forwarding address. As the tenant was not served with the amended application, I find I can not deal with the additional claims. Therefore, I dismiss the landlords' claim for damages to the rental unit with leave to reapply.

As the tenant has vacated the rental unit, I find I do not need to consider the landlords' application for an order of possession.

Issue to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on April 10, 2020. Rent in the amount of \$1,725.00 was payable on the first of each month. A security deposit of \$850.00 was paid by the tenant.

The landlords testified that the tenant only paid partial rent for September 2020, in the amount of \$1,175.00, leaving unpaid rent in the amount of \$550.00. The landlords stated that the tenant failed to pay any rent for October 2020 and November 2020. The landlords seek to recover unpaid rent in the total amount of \$4,000.00.

The tenant submits in their application rent was paid. The tenant provided a copy of a bank e-transfers record. It is not dated, does not show the date of the e-transfers or the email address of the recipient. Further, it shows only the amount of \$700.00 and \$300.00, being sent, not the full amount of rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

In this case, I accept the undisputed evidence of the landlords that the tenant failed to pay all rent owed for September 2020, and no rent for October and November 2020. The tenant's evidence submitted supports rent was not paid. I find the tenant breached the Act, when they failed to pay all rent owed and this caused losses to the landlords. I find the landlords are entitled to recover unpaid rent in the total amount of **\$4,000.00**.

I find that the landlord have established a total monetary claim of **\$4,100.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$850.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$3,250.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application is dismissed. The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim. Th

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 14, 2021

Residential Tenancy Branch