



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL

Introduction

This hearing was reconvened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

In an Interim Decision dated October 28, 2020 (the “Interim Decision”) the matter was reconvened to this participatory hearing with an order that the Landlord serve the Interim Decision and notice of reconvened hearing to the Tenants. The Tenants did not attend the hearing. I accept the Landlord’s evidence that the Tenants were served with the Interim Decision by registered mail on October 30, 2020 in accordance with Section 89 of the Act. 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 I find that the Tenants are deemed to have received the Interim Decision on November 4, 2020. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

In a Decision dated November 17, 2020, the Landlord obtained an order of possession for the unit and the Tenants moved out of the unit on November 30, 2020. The Landlord has possession of the unit. I therefore dismiss the claim for an order of possession. The Landlord has provided evidence of damages to the unit and bailiff

costs however the application does not include claims for these costs. Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that claims are limited to what is stated in the application. As no claim was included in the application in relation to this evidence, I may not consider any claims in relation to damage to the unit or other losses. The Landlord remains at liberty to make an application for such claims.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy under written agreement started on July 15, 2020 and ended on November 30, 2020. Rent of \$2,200.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,100.00 as a security deposit. The Tenant owes arrears of \$1,200.00 for September 2020 and failed to pay full rent for October and November 2020. The Landlord claims \$5,600.00.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the Landlord's undisputed evidence of unpaid rent I find that the Landlord has substantiated an entitlement to its claim of **\$5,600.00**. As the Landlord has been successful with this claim I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,700.00**. Deducting the security deposit of **\$1,100.00** plus zero interest from this entitlement leaves **\$4,600.00** owed to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$1,100.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act

for the remaining **\$4,600.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: January 15, 2021

Residential Tenancy Branch