



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, OPRM-DR, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to sections 26 and 67;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:14 A.M. to enable the tenants to call into this teleconference hearing scheduled for 11:00 A.M. The tenants did not attend the hearing. The landlord, represented by agents MD (the landlord) and MB, 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.

I accept the landlord's testimony that the tenants were served with the application and evidence (the materials) by registered mail on November 25, 2020, in accordance with section 89(2)(b) of the Act (the tracking numbers are 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 tenants are deemed to have received the materials on November 30, 2020, in accordance with section 90 (a) of the *Act*.

The landlord affirmed a second set of evidence documents was uploaded to the Residential Tenancy Branch on January 25, 2021 and was not served to the tenants. These documents are excluded per section 3.13 of the Rules of Procedure.

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

Preliminary Issue – Vacant Rental Unit

At the outset of the hearing the landlord affirmed the rental unit is vacant. The landlord was informed by a neighbour of the tenants that they left the rental unit in the last week of November 2020. The tenants did not serve a notice to end tenancy and did not return the keys.

The landlord's application for an order of possession is moot since the tenants 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 landlord's application for an order of possession.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for compensation for unpaid rent?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the accepted 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 their obligation to present the evidence to substantiate their application.

The landlord testified the parties entered a fixed-term tenancy from February 15, 2020 to February 15, 2021, in the last week of November 2020 the tenants vacated the rental unit. Rent is \$1,750.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$875.00 was collected and the landlord holds it in trust. The tenant agreement was submitted into evidence.

The landlord affirmed the tenants did not pay rent on April, May, July, August and September 2020 and paid \$600 for rent in June 2020. The tenants are in arrears of \$9,900.00.

The landlord submitted into evidence a repayment plan served in person on August 23, 2020. The landlord did not receive the tenants' forwarding address.

Analysis

Based on the landlord's undisputed testimony and the tenancy agreement, I find the tenants agreed to pay monthly rent in the amount of \$1,750.00. 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 this Act.

Based on the landlord's undisputed testimony and the repayment plan, I find the tenants are in arrears for \$1,150.00 for the balance of June 2020 and \$8,750.00 for the months of April, May, July, August and September 2020 (\$1,750.00 per month), in the total amount of \$9,900.00.

Section 38(1) of the Act requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy and upon receipt of the tenant's forwarding address in writing. The landlord submitted this application before receiving the tenants' forwarding address.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain the \$875.00 security deposit.

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

In summary, the landlord is entitled to:

Expenses	\$
April, May, July, August and September 2020 (\$1,750.00 x 5)	8,750.00
Balance of June 2020 rent (received \$600.00 of \$1,750.00)	1,150.00
Filing fee	100.00
Subtotal	10,000.00
Minus deposit	-875.00
Total monetary award	9,125.00

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$875.00 security deposit and grant the landlord a monetary order in the amount of \$9,125.00.

The landlord is provided with this order in the above terms and the tenants must be served with this order. Should the tenants 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: February 09, 2021

Residential Tenancy Branch