



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Widsten Property Management
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, OPRM-DR

Introduction

This hearing, reconvened from a Direct Request proceeding, dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the Interim Decision and Notice of Reconvened Hearing and evidence by registered mail sent on December 11, 2020. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on December 16, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing the landlord stated that the tenant has vacated the rental unit and withdrew the portion of their application seeking an order of possession.

The landlord said that since the application was filed additional rent has come due and requested to amend the amount of their monetary claim. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as additional rent coming due is reasonably foreseeable I allow the landlord to amend their monetary claim from \$1,200.00 to \$4,800.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Background and Evidence

The landlord gave undisputed testimony regarding the following facts. The monthly rent for this periodic tenancy is \$1,200.00 payable on the first of each month. A security deposit of \$600.00 was collected at the start of this tenancy and is still held by the landlord. The tenant has failed to pay rent for the months of November and December 2020 and January and February 2021 before vacating sometime in February 2021. There is a rental arrear of \$4,800.00 as at the date of the hearing, March 1, 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.

I accept the testimony of the landlord, supported in the documentary evidence including the signed tenancy agreement, that monthly rent for this tenancy was \$1,200.00. I accept the undisputed evidence of the landlord that the tenant failed to pay rent from November 2020 onwards and there is an arrear of \$4,800.00 as at the date of the hearing. Accordingly, I find that the landlord has met their evidentiary burden on a balance of probabilities that there is a monetary loss arising from the tenant's breach of the tenancy agreement. I therefore issue a monetary award in the landlord's favour for the amount of \$4,800.00.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$4,200.00, to recover the unpaid rent and retain the security deposit for this tenancy. 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: March 1, 2021

Residential Tenancy Branch