

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

This matter originated as a direct request proceeding and was scheduled for this participatory hearing in an Interim Decision dated December 24, 2020. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants and their agent and the landlord and his agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenants were served with the Notice of Hearing Documents and Interim Decision, via registered mail. I find that the above documents were served in accordance with section 89 of the *Act*.

Both parties agree that this tenancy has ended. As this tenancy has ended, I dismiss the landlord's application for an Order of Possession as said Order is no longer necessary.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 20, 2015 and ended on December 10, 2020. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$200.00 was paid by the tenants to the landlord.

Both parties agree that they had a previous dispute resolution hearing with the Residential Tenancy Branch on November 10, 2020. Both parties agree that they entered into a settlement agreement. The file number for the previous file is on the cover page of this decision. The settlement agreement decision was entered into evidence and states:

1. The parties agreed to mutually end the tenancy on February 28, 2021;
2. The parties agreed that any communication between the landlord and tenants will be done in writing. The occupants of the tenant are not to have any communication whatsoever with the landlord;
3. The tenants promise that no one from their rental unit will slam any doors;
4. The parties agreed that they will all make effort not waste hot water, to ensure there will be sufficient hot water for everyone;
5. The tenants will pay November 2020, rent today (November 10, 2020), by etransfer, that email address for rent payments is noted on the covering page of this decision; and
6. The tenants will ensure subsequent rent for December, January and February are paid on the 1st of each month by etransfer.

Both parties agree that neither party is comfortable with e-transfers and that both parties required assistance to send and receive e-transfers. Both parties agree that the tenants sent the landlord an e-transfer for November's rent on November 13, 2020. Both parties agree that there was an unknown problem with the e-transfer and the landlord was not able to deposit the transfer into his account.

The tenants' agent submitted that tenant J.K. gave the landlord \$1,200.00 in cash on November 15th or 16th because the e-transfer did not work. The tenants' agent

submitted that the landlord did not give tenant J.K. a receipt and that throughout the course of the tenancy the tenants paid the landlord in cash and the tenants never received a receipt.

The landlord testified that tenant J.K. did not give him November 2020's rent in cash and that if the tenant had, he would have given him a rent receipt. The landlord testified that since the first application for dispute resolution between the parties was filed in September 2020, the tenants started requesting receipts for rent paid. The landlord testified that starting in October 2020, rent receipts were provided. No rent receipts were entered into evidence.

The tenant's agent testified that the landlords did not give the tenants a rent receipt for October 2020.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In regard to the landlord's claim for rent in the amount of \$1,200.00 for November 2020, the burden of proving that rent was not paid in cash, as claimed by the tenants, rests with the landlord.

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*.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts can help to establish when a rent payment has *not* been made.

When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made.

When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant can provide a receipt for such a payment.

I find that the landlord has failed to prove that rent receipts were ever provided as no rent receipts were entered into evidence. In these circumstances the landlord's failure to provide receipts for cash payments made during this tenancy significantly impaired his ability to prove that the tenant did not pay November 2002's rent. I find that the landlord has not proved, on a balance of probabilities, that rent was not paid for November 2020. The landlord's application for dispute resolution is therefore dismissed without leave to reapply.

As the landlord was not successful in this application for dispute resolution, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

The landlord's application for dispute resolution is dismissed without leave to reapply.

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 18, 2021

Residential Tenancy Branch