



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDL OPR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- an Order of Possession for unpaid rent or utilities, pursuant to section 55;
- a monetary order for unpaid rent or utilities, pursuant to section 67;
- a monetary order for monetary loss or money owed pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:47 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn 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. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference for this hearing.

The landlord testified that the tenant was personally served with a copy of the dispute resolution hearing package ('Application') on January 8, 2021. Accordingly, I find the tenant duly served with the package and evidence on January 8, 2021. The tenant did not submit any written evidence for this hearing.

The landlord testified that the tenant was personally served the 10 Day Notice on December 15, 2020. The landlord provided a proof of service dated December 15, 2020, signed by the tenant. In accordance with section 88 of the Act, I find the tenant duly served with the 10 Day Notice on December 15, 2020.

Although the landlord applied for a Monetary Order of \$141.75 in their initial claim for money owed by the tenant, the landlord testified that the tenant has not paid any rent since November 2020. Since the filing of this application, the landlord testified that the tenant's unpaid rent, not including the rent for the affected period of March 18, 2020 to August 17, 2020, amounts to \$3,109.00. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. I have accepted the landlord's request to amend their original application to reflect the additional unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent or money owed?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord provided the following testimony. This month-to-month tenancy began on December 20, 2019. The tenant pays monthly rent in the amount of \$450.00 plus \$100.00 for parking. The landlord testified that no written tenancy agreement exists for this tenancy. The landlord did not verify whether the tenant had provided a security deposit for this tenancy.

The landlord testified that he had served the tenant with a 10 Day Notice for Unpaid Rent on December 15, 2020, with an effective date of December 25, 2020, as the tenant had accrued \$1,759.00 in unpaid rent. The landlord testified that since the 10 Day Notice was served on the tenant, the tenant has not paid the outstanding rent nor has the tenant moved out. The landlord did not submit a copy of the 10 Day Notice in his evidentiary materials, but testified that the tenant did confirm that he was served the 10 Day Notice as supported in the signed proof of service. I had allowed the landlord to submit a copy of the 10 Day Notice after the hearing, but the landlord testified that he did not submit a copy of the 10 Day Notice as he did not retain a copy to submit.

The landlord is seeking an Order of Possession pursuant to the 10 Day Notice as well as Monetary Order for the unpaid rent in the amount of \$1,759.00 plus \$450.00 per month for the months of January 2021 through to March 2021.

The landlord is also seeking reimbursement for repairs to the gas fireplace. The landlord testified that the tenant had damaged the fireplace, and had agreed to pay for the repairs, but never did. The landlord submitted a copy of an invoice in the amount of \$141.75.

Analysis

Section 52 of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form...

As neither party submitted a copy of the 10 Day Notice for this hearing, I was unable to verify that the Notice complies with the requirements of section 52 of the *Act*. Under these circumstances, I dismiss the landlord's application for an Order of Possession with leave to reapply. The tenancy will continue until ended in accordance with the *Act*.

Section 26 of the *Act*, in part, states as follows:

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.

The landlord provided undisputed evidence that the tenant failed to pay \$3,109.00 in outstanding rent for this tenancy, which does not include the rent owed during the affected period of March 18, 2020 to August 17, 2020.

The landlord is seeking reimbursement of \$141.75 for repairs to the gas fireplace, which the landlord testified was damaged by the tenant during this tenancy.

Section 32 of the Act states the following about repairs.

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I find that the landlord provided undisputed testimony and evidence that the landlord incurred a monetary loss of \$141.75 due to the tenant's actions. I accept the landlord's undisputed testimony that the tenant had damaged the fireplace, and had failed to reimburse the landlord as agreed upon by both parties. Accordingly, I allow the landlord's monetary claim for recovery of this amount.

I allow the landlord to recover the filing fee paid for this application.

Conclusion

I dismiss the landlord's application for an Order of Possession with leave to reapply.

I issue a \$3,350.75 Monetary Order in favour of the landlord, which allows the landlord to recover the unpaid rent for this tenancy, not included the affected period of March 18, 2020 to August 17, 2020, the filing fee for this application, and money owed 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 25, 2021

Residential Tenancy Branch