



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, OPRM-DR, MNDCL, OPC
CNC, FFT
CNR**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act ("Act").

The landlord applied for:

- An Order of Possession for unpaid Rent by direct request pursuant to sections 46 and 55;
- An order of possession for unpaid Rent and a monetary order by direct request pursuant to sections 46, 55 and 67;
- A monetary order for damages or compensation pursuant to section 67; and
- An Order of Possession for Cause pursuant to sections 47 and 55.

The tenants applied for:

- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55;
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72; and
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55.

The tenants did not attend this hearing although the teleconference connection was left open throughout the hearing which commenced at 9:30 a.m. and concluded at 10:00 a.m. 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 landlords and I were the only ones who had called into this teleconference.

Both of the landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords testified that they served each of the tenants with the Application for Dispute Resolution Proceedings Package by sending each one a package by registered mail on February 5, 2021. Tracking numbers for the mailings are recorded on the cover page of this decision. The Application for Dispute Resolution Proceedings Packages are deemed served upon the tenants on February 10, 2021, five days after the packages were sent by registered mail in accordance with sections 89 and 90 of the Act.

This hearing proceeded in the absence of the tenants in accordance with Rule 7 of the Residential Tenancy Branch Rules of Procedure.

Preliminary Issue

The landlords filed an amendment to their original direct request proceeding on March 4, 2021 and copy of the amendment, dated April 3, 2021 was located in the Residential Tenancy Branch Dispute management system. The landlords testified they served one of the tenants, GC with the amendment by registered mail on March 5, 2021 and the tracking number for the mailing is recorded on the cover page of this decision. The landlords gave no testimony regarding service of the amendment upon the second tenant, ED.

Rule 4.6 of the Residential Tenancy Branch Rules of Procedure require that the landlord serve each respondent with the Amendment to an Application for Dispute Resolution form and supporting evidence not less than 14 days prior to the hearing and demonstrate to the arbitrator that each respondent was served. As I have no proof that the second tenant, ED was served with the amendment, I dismiss the amendment mis-dated April 3, 2021 with leave to reapply.

The landlords filed a second amendment to their application on March 24, 2021 but acknowledged they did not serve this amendment upon the tenants. As the landlords did not serve this amendment, I dismiss the March 24th amendment with leave to reapply.

Rule 4.2 states that in circumstances that can be reasonably anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. The landlords were allowed to amend their original application for unpaid rent to include rent for March 2021 at the commencement of the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Can the landlord recover unpaid rent?

Background and Evidence

The landlords gave the following undisputed testimony. The tenants vacated the rental unit on March 15, 2021. Rent of \$2,800 per month, payable on the first day of each month, was not paid for February or March 2021. The landlord is currently holding the tenant's security deposit and pet damage deposit totalling \$2,800.00. The rental unit was successfully re-rented on April 1, 2021.

Analysis

The tenants filed applications for dispute resolution seeking to cancel the Notices to End Tenancy on January 8 and February 3, 2021. The tenants did not attend the hearing of this application. The landlords, who were in attendance, testified that the tenants had moved out of the rental unit as of March 15, 2021. Based on this evidence, I find that the tenants accepted the validity of the Notices to End Tenancy or otherwise agreed to terminate the tenancy. As such, the tenants' applications seeking to cancel the Notices to End Tenancy are dismissed without leave to reapply on this basis. It is not necessary for me to determine on the merits whether the Notices to End tenancy were valid and I make no findings with respect to their validities. As the tenants already moved out of the rental unit, it is not necessary for me to grant the landlords an order of possession. However pursuant to section 44(1)(f), I make the finding that the tenancy ended on March 15, 2021.

Claims for Rent and Damages for Loss of Rent are explored in Residential Tenancy Branch Policy Guideline PG-3 [Claims for Rent and Damages for Loss of Rent]. The guideline states:

Section 44 of the Residential Tenancy Act set out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provision, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises.

The landlord provided undisputed testimony to satisfy me the tenants failed to pay rent in the amount of \$2,800.00 for the month of February and they also failed to pay rent for the first 15 days of March, contrary to section 26 of the Act. Pursuant to section 67, the

landlords are entitled to a monetary order in the amount of \$2,800.00 (February rent) + \$1,400.00 (one half rent for March) totaling \$4,200.00.

In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenants' entire security deposit and pet damage deposit totaling \$2,800.00 in partial satisfaction of the monetary claim.

The landlords are entitled to a monetary order of $\$4,200.00 - \$2,800.00 = \mathbf{\$1,400.00}$.

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$1,400.00**. The tenants must be served with this Order as soon as possible. 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: April 09, 2021

Residential Tenancy Branch