



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Superior Living Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenants: CNR, RP
For the landlord: OPR-DR, OPRM-DR, FFL

Introduction

On February 11, 2021 the tenant applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy Issued for Unpaid Rent or Utilities issued by the landlord (the “10-Day Notice”). They also applied for the landlord to make repairs to the rental unit.

One March 9, 2021 the landlord applied for an order of possession of the rental unit, and a monetary order for rent not paid. Additionally, they applied for reimbursement of the application filing fee.

The landlord’s application here was filed initially as a Direct Request. The matter proceeded by way of participatory hearing because this Direct Request application cannot be considered by that method when there is a cross-application by the tenant in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 17, 2021. The landlord attended the telephone conference call hearing; the tenant did not attend.

Preliminary Matters

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with the notice of this hearing. This means the landlord must provide proof that the document was served in a verified manner allowed under s. 89 of the *Act* and I must accept that evidence. In the hearing the landlord stated that they served a copy of the notice

document and their prepared evidence, via an agent, in person to each tenant on February 22, 2021. They provided evidence of this in a Proof of Service document, with a witness signature.

The tenant did not attend the hearing, although I left the teleconference hearing connection open until 11:16 a.m. to enable them to call in to this teleconference hearing scheduled for 11:00 a.m. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when the tenants applied. I also confirmed throughout the duration of the call that the tenants were not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the tenants' application for cancellation of the 10-Day Notice. I also dismiss the tenants' request for landlord's repairs. The tenants do not have leave to reapply on these issues.

At the outset of the hearing, the landlord provided that they applied for an order to end the tenancy early. This was based on grounds outlined in s. 56(2) of the *Act*. The Arbitrator in a prior hearing granted an Order of Possession to the landlord under s. 56. This ended the tenancy. The tenants vacated the rental unit on February 28, 2021.

Because the landlord previously obtained an Order of Possession that ended the tenancy, I dismiss this portion of their Application. This issue was previously resolved, and by the *Residential Tenancy Branch Rules of Procedure* Rule 2.3, I amend the landlord's Application to exclude this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord spoke to the terms of the tenancy agreement, a copy of which they provided as evidence. The tenancy began on September 1, 2019 for the fixed term ending one year later. The rent amount was \$1,200; however, they provided that earlier in the agreement this was reduced by half when one tenant fulfilled maintenance duties. The tenants initially paid a security deposit of \$300, and a pet damage deposit of \$300. The tenants were not in attendance at this hearing to provide any information contrary to that presented by the landlord on these discrete points.

The landlord provided a copy of the 10-Day Notice, issued February 1, 2021. This document gave the move-out date of February 12, 2021. This listed the failure by the tenants to pay the rent of \$1,200 on February 1, 2021. As provided in a 'Proof of Service' document, a witness observed the document posted to the door of the rental unit.

In the hearing, the landlord testified that the tenants did not pay the full amount of rent. In their evidence, they presented that the tenants paid \$400 for February, leaving \$800 owing. For the following month of March, the tenants paid \$350, leaving \$850 owing. This evidence remains uncontradicted where the tenants provided no evidence for this hearing. The landlord also provided some of their communication with the tenants for unpaid rent.

The total amount of the landlord's claim for rent amounts owing is \$1,650.

Analysis

From the evidence and testimony of the landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rent payments as well as the amount the tenants paid for the security deposit. The tenants did not attend the hearing; therefore, there is no evidence before me to show otherwise.

I accept the undisputed evidence before me that the tenant failed to pay the rent owed in full, within the five days granted under s. 46(4) of the *Act*. The tenant disputed the notice within that timeframe; however, that Application is dismissed.

The *Act* s. 26 outlines a tenant's duty to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether 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.

I accept the landlord's affirmed testimony that the tenant failed to pay full rent for February 2021 and the month following through to March 2021. This constitutes a breach of the *Act* and the tenancy agreement. As presented, I find the landlord is entitled to the amount of \$1,650 as they claim.

As the landlord is successful, I find that the landlord is entitled to recover the \$100 filing fee paid for this application.

Conclusion

In the absence of the tenants I dismiss their application in its entirety and without leave to re-apply.

Pursuant to ss. 67 and 72 of the *Act*, I grant the landlord a Monetary Order for the recovery of the amounts claimed and the filing fee paid for this application. This amount is \$1,750. The landlord is provided with this Order in the above terms and 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 s. 9.1(1) of the *Act*.

Dated: May 18, 2021

Residential Tenancy Branch