



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WILLINGDON AVENUE DEVELOPMENTS
LP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act") made on February 18, 2021. The Landlord applied to enforce a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) served on February 3, 2021, a monetary order for unpaid rent, and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord's Agent (the "Landlord") attended the hearing and was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that they served the Application for Dispute Resolution to the Tenant by Canada Post registered mail, sent on February 26, 2021, a tracking number was provided as proof of service. I find that the Tenant has been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Landlord was advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter – Application for Amendment

The Landlord testified that this tenancy ended on March 31, 2021, the date they took back possession of the rental unit. The Landlord confirmed that they did no longer required an order of possession in this case.

On May 14, 2021, the Landlord submitted an application for amendment to the Residential Tenancy Branch, requesting to add a monetary claim in the amount of \$3576.00 in compensation for damage caused by the tenant, their pets or guests to the unit, site or property.

Section 59 of the Act states that the respondent must be served with a copy of the Application for Amendment. The Landlord testified that they do not have a means of contacting the Tenant since the tenancy ended but that they do have contact with the hospital social worker where the tenant is currently housed, and that they had served the application for amendment to the Tenant by emailing a copy of this documents to this social worker. The Landlord confirmed that they do not have obtained a substituted service order granting permission to serve legal documents to the Tenant through a third party.

As there is no substituted service order permitting the service of legal documents to this Tenant through a third party, I find that the Application for Amendment has not been served to the Tenant as required under the *Act*. Consequently, I dismiss, with leave to reapply, the Landlord's Application for Amendment.

Issues to be Decided

- Is the Landlord entitled to a monetary order for rent?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The tenancy agreement shows that the tenancy began on July 15, 2019, as a one-year and 16-day fixed term tenancy that rolled into a month-to-month tenancy. The Landlord testified that rent in the amount of \$1,280.00 was to be paid by the first day of each month and that they had collected a \$640.00 security deposit at the outset of this tenancy. A copy of the tenancy agreement was submitted into documentary evidence.

The Landlord testified that the Tenancy ended on March 31, 2021, the date they took back possession of the rental unit from Tenant.

The Landlords testified that the Tenant had not paid the rent for February and March 2021, in the amount of \$2,560.00 for this tenancy. The Landlord is requesting a monetary order for the outstanding rent.

Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

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.*

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, I accept the undisputed testimony of the Landlord that the rent has not been paid for February and March 2021 for this tenancy. I find that the Tenant breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$1,920.00, comprised of \$1,280.00 in rent for February 2021,

\$1,280.00 in rent for March 2021, less the \$640.00 the Landlord is holding as a security deposit for this tenancy. The Landlord is granted permission to keep the security deposit for this tenancy.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlords a monetary order of \$2,020.00, consisting of \$1,920.00 in rent and the recovery of the \$100.00 filing fee for this hearing.

Conclusion

I find for the Landlord under sections 26, 65 and 72 of the *Act*. I grant the Landlord a **Monetary Order** in the amount of **\$2,020.00**. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 1, 2021

Residential Tenancy Branch