



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR-DR, MNR-DR, FFL
Tenant: FFT, CNR

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also 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 section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:47 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Rule 7.1 of the Residential Tenancy Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may

conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, in the absence of any evidence or submissions from the tenants, I order the tenants' application dismissed without liberty to reapply.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that he was not recording this dispute resolution hearing.

The landlord confirmed his email address for service of this decision and order.

The landlord testified that the tenants were served with a copy of this application for dispute resolution and evidence via registered mail on January 21, 2022. A Canada Post receipt for same was entered into evidence. I find that the tenants were deemed served with the landlords' application for dispute resolution and evidence on January 26, 2022, five days after their mailing, in accordance with sections 88 and 89 of the *Act*.

The landlord testified that the tenants' moved out of the subject rental property at the end of January 2022. As this tenancy has ended, I dismiss the landlord's application for an Order of Possession as it is no longer necessary.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to recover the filing fee for this application 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 the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. The tenants signed a tenancy agreement on October 7, 2021 effective October 7, 2021. Monthly rent in the amount of \$2,400.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on January 1, 2022, the tenants only paid \$1,200.00, not the full \$2,400.00 due on January 1, 2022. The landlord's application for dispute resolution states that the landlord is seeking \$1,200.00 in unpaid rent for January 2022. In the hearing the landlord testified that he accepted the \$1,200.00 from the tenants on January 1, 2022 for use and occupancy and that the tenants still owe him rent for January 2022 totalling \$2,400.00.

The landlord entered into evidence the following text message exchange between tenant D.H. and the landlord dated January 1, 2022:

- Tenant D.H.: Was just calling to let you know I can only send you Half months rent right now and I will send the rest on a later day
- Landlord: What is that for? Letter when?! According to the agreement that you signed the rent is due at the first day of the each month. At least be respectful to your word and your signature
- Tenant D.H.: I took Christmas off of work not knowing I was going to be evicted so I just do not have the money right now so I will pay you the rest when I can like we still have to pay to move so I'm sorry but I'm not going to have my family living on the streets.

The landlord testified that the tenant never paid the remaining \$1,200.00. The tenant entered into evidence a 10 Day Notice to End Tenancy for Unpaid Rent dated January 2, 2022 which states that the tenant "failed to pay rent in the amount of \$2400.00 (you paid \$1200 of first of January) due on January 1, 2022".

Analysis

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*. Pursuant to section 26(1) of the *Act*, I find that the tenants were obligated to pay the monthly rent in the amount of \$2,400.00 on the first day of each month. Based on the undisputed testimony of the landlord and the text messages entered into evidence, I find that the

tenants paid \$1,200.00 on January 1, 2021, not the full \$2,400.00 that was due, contrary to section 26(1) of the *Act* and have not since paid the outstanding \$1,200.00. Pursuant to section 67 of the *Act*, I find that the tenants owe the landlord \$1,200.00 in unpaid rent for the month of January 2022.

I find that the landlord is not entitled to claim “use and occupancy” fees in addition to unpaid rent. If a tenancy is ongoing, a landlord is entitled to rent. If a tenancy has ended and the tenant is overholding, the landlord is entitled to compensation for overholding, which is calculated on a per diem basis based on the monthly rent charged. A landlord is not entitled to double charge a tenant for rent in addition to use and compensation fees or overholding fees.

As the landlord was successful in their application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord in the amount of \$1,300.00.

The landlord is provided with this Order in the above terms and 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 05, 2022

Residential Tenancy Branch