



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the landlord on March 7, 2022, under the Residential Tenancy Act (the “Act”), for an order of possession, for a monetary order for unpaid rent, and to recover the cost of the filing fee.

In addition to the above, on March 31, 2022, the landlord made an application for substituted service order to be allowed to serve the tenants by the method of email, as the tenants vacated the premises without providing the landlord their forwarding address.

On April 20, 2022, the application for substituted service was considered and a decision made, allowing the landlord to serve the tenant JA by email. The decision did not grant the landlord permission to serve AA by email as the landlord did not provide sufficient evidence relating to the tenant AA.

The landlord and the landlord’s agent attended the hearing gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were served on the tenant JA by email sent on May 4, 2022. I find JA was deemed served three days after it was emailed.

The landlord testified that they were unable to serve the tenant AA.

In this case only the tenant JA was served in accordance with the Act. Therefore, this hearing only proceeded against the named tenant JA. I have removed AA from the style of cause.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matters

At the outset of the hearing the landlord indicated that the tenants vacated the rental unit without providing a forwarding address and they no longer require an order of possession.

I note the landlord has filed evidence that is related to damages of the rental unit, nine days before the hearing. The landlord did not amend their application to include a monetary claim for damages and in any event, this does not comply with the Residential Tenancy Branch Rules of Procedures. Therefore, I find any claim for damages to the rental unit will not be considered at today's hearing.

However, I find it appropriate to make the following order related to service of any future Application for Dispute Resolution related to this tenancy **made within 90 days** of this Decision.

I authorize the landlord to be allowed to serve the tenant JA, by email at the email address provided for JA in the original substitutional order of any future hearing. I have noted the email address of JA on the covering page of this Decision.

This will include the Application for Dispute Resolution, Notice of Dispute Resolution Proceeding package , Notice of Hearing, and any evidence the landlord wish to rely upon.

I order the landlord to provide proof of service of the e-mail which may include a printout of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served tenant J.A. in accordance with this Order.

The landlord is to provide a copy of this Decision for any future hearing to show that I have made a substitutional service order.

Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on September 1, 2020. Rent in the amount of \$2,800.00 was payable on the first of each month. The tenants paid a security deposit of \$1,400.00 and a pet damage deposit of \$1,400.00. The tenancy ended based on a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord stated they are unsure of the exact date the tenants vacated; however, it was within the first two weeks in March 2022.

The landlord testified that the tenants failed to pay rent for January and February 2022. Filed in evidence are copies of email exchanges between the parties. The landlord seeks to recover unpaid rent in the total amount of \$5,600.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

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.

...

I accept the undisputed testimony of the landlord that the tenants failed to pay rent for January and February 2022. This is supported by the landlord's documentary evidence. I find the tenants breached section 26 of the Act, when they failed to pay rent when due under the terms of their tenancy agreement. Therefore, I find the landlord is entitled to recover unpaid rent in the total amount of \$5,600.00.

I find that the landlord has established a total monetary claim of **\$5,700.00** comprised of the above described amount and the \$100.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order for unpaid rent and to recover the cost of the filing fee.

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 24, 2022

Residential Tenancy Branch