



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDCT, LRE, PSF, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Tenant (the Application) under the *Residential Tenancy Act* (the *Act*), on March 3, 2022, seeking:

- Cancellation of Two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities;
- An order for the Landlords to comply with the *Act*, regulations, or tenancy agreement;
- Compensation for monetary loss or other money owed;
- An order suspending or setting conditions on the Landlords' right to enter the rental unit;
- An order for the Landlords to provide services or facilities required by the tenancy agreement or law; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call on June 7, 2022, at 1:30 PM and was attended by the Landlords A.S. and R.M., both of whom attended on time and ready to proceed. No one appeared on behalf of the Tenant. Although the Landlords stated that the Tenant never served them with any documents in relation to this hearing, they stated that they received them from the Residential Tenancy Branch (the Branch) upon their request and therefore attended the hearing ready to proceed, despite not having been served by the Tenant.

Based on the above, and as I verified that the hearing information contained in the Notice of Hearing sent to the Tenant by the Branch in the manner requested by them was correct, the hearing therefore proceeded as scheduled despite the absence of the Tenant or an agent acting on their behalf, pursuant to rules 7.1 and 7.3 of the Rules of

Procedure. The Landlords were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Landlords were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. They were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Landlords stated that as the Tenant abandoned the rental unit without providing a forwarding address, and as such, the documentary evidence before me was not served on the Tenant in relation to this hearing. However, they stated that many of the documents, such as the rent receipts provided, were issued to the Tenant during the tenancy and therefore the Tenant would have been aware of them.

Rule 7.3 of the Rules of Procedure 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 reapply. Although the line remained open for the duration of the hearing, neither the Tenant nor an agent acting on their behalf appeared to provide any evidence or testimony for my consideration. As a result, and pursuant to rule 7.3 of the Rules of Procedure, I therefore dismiss the following claims made by the Tenant in their Application, without leave to reapply:

- An order for the Landlords to comply with the *Act*, regulations, or tenancy agreement;
- Compensation for monetary loss or other money owed;
- An order suspending or setting conditions on the Landlords' right to enter the rental unit;
- An order for the Landlords to provide services or facilities required by the tenancy agreement or law; and
- Recovery of the filing fee.

Having made this finding, I will now turn my mind to whether the Landlords are entitled to any amount of unpaid rent pursuant to section 55(1.1) of the *Act*. As the Landlords stated that the Tenant vacated/abandoned the rental unit on approximately March 19, 2022, I therefore find that it is unnecessary to determine if the Landlords are entitled to an Order of Possession for the rental unit pursuant to section 55(1) of the *Act* as they already have possession of the rental unit.

Although I have reviewed all evidence and testimony before me that I have accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Landlords, a copy of the decision and any orders issued in their favor will be mailed to them at the mailing address provided in the Application and confirmed at the hearing.

Preliminary Matters

There was a typographical error in the surname of the Landlord with the initials R.M. I amended the Application accordingly.

Issue(s) to be Decided

Are the Landlords are entitled to any amount of unpaid rent pursuant to section 55(1.1) of the *Act*?

Background and Evidence

The tenancy agreement in documentary evidence before me states that the fixed-term tenancy commenced on August 1, 2021, and was set to end on January 30, 2022, after which time the tenancy would continue on a periodic (month-to-month) basis. The tenancy agreement states that rent in the amount of \$1,450.00 is due on the first day of each month, and that a \$750.00 security deposit was required. At the hearing the Landlords stated that the above noted terms of the tenancy agreement are correct and that they still hold the \$750.00 security deposit in trust as they complied with the Act with regards to move-in and move-out condition inspections and reports and the Tenant did not provide a forwarding address for its return.

The Landlords stated that the Tenant did not pay rent on time and in full as required by the tenancy agreement, and that as a result, two separate notices to end tenancy were served. The Landlords stated that the first Notice to End Tenancy for Unpaid Rent or Utilities (10 Day #1) was posted to the door of the rental unit on March 2, 2022, regarding outstanding February 2022 rent and that the second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day #2) was posted to the door of the rental unit the same day regarding outstanding March 2022 rent.

Copies of the above noted 10 Day Notices were submitted by the Tenant for my review and consideration as part of the Application. 10 Day Notice #1 is signed and dated March 2, 2022, has an effective date of March 12, 2022, and states that rent in the amount of \$950.00 was due on February 1, 2022. 10 Day Notice #2 is signed and dated March 2, 2022, has an effective date of March 12, 2022, and states that rent in the amount of \$1,450.00 was due on March 1, 2022.

The Landlords stated that currently the Tenant owes \$2,400.00 in outstanding rent; \$950.00 for February 2022 and \$1,450.00 for March 2022 and submitted copies of rent receipts and a text messages in support of these claims.

Although the teleconference remained open during the 18-minute duration of the hearing, no one appeared on behalf of the Tenant to present any evidence or provide and testimony for my consideration.

Analysis

Based primarily on the documentary evidence before me from the Tenant and the affirmed and uncontested testimony of the Landlords, I am satisfied that a tenancy to which the *Act* applies existed between the parties, and that rent in the amount of \$1,450.00 is due on the first day of each month. I am also satisfied that the Landlords hold a \$750.00 security deposit in trust.

Section 26 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 the *Act*, the regulations, or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. I accept the Landlord's affirmed and undisputed testimony that the Tenants last paid partial rent in February of 2022 and that they did not have authority under the *Act* to deduct or withhold any rent for February or March of 2022.

Section 46(4) of the *Act* states that within five days after receiving a notice under section 46 of the *Act*, a tenant may dispute the notice by making an application for dispute resolution.

At the hearing the Landlords testified that the 10 Day Notices were posted to the door of the rental unit on March 2, 2022, and records at the Branch indicate that the Tenant filed the Application seeking cancellation of the 10 Day Notices on March 3, 2022. As a result, and in the absence of any evidence to the contrary, I am satisfied that the Tenant filed the Application seeking cancellation of the 10 Day Notices within the timeline set out under section 46(4) of the *Act*. As a result, I find conclusive presumption under section 46(5) of the *Act* does not apply and that the tenancy therefore ended on approximately March 19, 2022, when the Landlords stated that the Tenant vacated/abandoned the rental unit.

Pursuant to section 55(1.1) of the *Act* and Residential Tenancy Policy Guideline (Policy Guideline) #3, I find that the Landlords are therefore entitled to recovery of \$1,838.63 in unpaid rent, calculated as follows:

- \$950.00 in outstanding rent for February 2022; plus
- \$888.63 in outstanding rent for the period of March 1, 2022 – March 19, 2022, calculated at a per diem rate of \$46.77 ($\$1,450.00/31 \text{ days} = \46.77).

If the Landlords suffered a loss of rent after March 19, 2022, because of a breach of the *Act* by the Tenant, the Landlords remain entitled to file an application for dispute resolution seeking any loss of rent suffered after March 19, 2022, should they wish to do so.

At the Landlords' request and pursuant to section 72(2)(b) of the *Act*, I authorize the Landlords to withhold the \$750.00 security deposit currently held in trust towards the amounts owed by the Tenant for rent. Based on the above and pursuant to section 67 of the *Act*, I therefore grant the Landlords a Monetary Order in the amount of \$1,088.63, and I order the Tenants to pay this amount to the Landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of **\$1,088.63**. The Landlords are 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.

Pursuant to section 72(2)(b) of the *Act*, I also authorize the Landlords to withhold the \$750.00 security deposit.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to render them, are affected by the fact that this decision and the associated order were issued more than 30 days after the close of the proceedings.

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: July 21, 2022

Residential Tenancy Branch