



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON WEST COAST REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord March 07, 2022 (the "Application"). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 03, 2022 (the "Notice")
- To recover unpaid rent
- To recover the filing fee

This was an adjourned direct request.

The Agent for the Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Agent. I told the Agent they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Agent provided affirmed testimony.

The Agent testified that as of April 20, 2022, Tenant T.E. had passed away in the rental unit and Tenant E.M. had abandoned the rental unit. Given this, the Landlord is not seeking an Order of Possession.

I have amended the Application to indicate that it is the estate of Tenant T.E. that is one of the tenants in this matter given Tenant T.E. passed away April 20, 2022. References to the Tenants prior to April 20, 2022, in this decision relates to Tenant T.E. and Tenant E.M. References to the Tenants after April 20, 2022, in this decision relates to the estate of Tenant T.E. and Tenant E.M.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlord's evidence.

The Agent testified that the hearing package and Landlord's evidence were sent to the rental unit by registered mail April 14, 2022. The Agent testified that the Landlord understood the Tenants to still reside at the rental unit on April 14, 2022. The Landlord submitted documentary evidence of service showing the packages were unclaimed after attempted delivery on April 20, 2022.

Based on the undisputed testimony of the Agent and documentary evidence of service, I am satisfied the Tenants were served with the hearing package and Landlord's evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). The Tenants cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the Act, the Tenants would usually be deemed to have received the hearing package and evidence April 19, 2022. However, based on the Canada Post tracking information, I find the Tenants received the hearing package and evidence April 20, 2022, more than three months before the hearing. I find the timing of service sufficient.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started November 01, 2021, and was for a fixed term ending October 31, 2022. Rent was \$5,200.00 due on the first day of each month. The Tenants paid a \$2,600.00 security deposit.

The Agent sought an order that the Landlord be allowed to keep the security deposit towards unpaid rent.

The Agent testified that the Landlord is seeking \$26,000 in unpaid rent for January to May 31, 2022. The Agent testified that the Tenants did not have authority under the *Act* to withhold this rent.

The Agent submitted that the Landlord is entitled to rent after April 20, 2022, when Tenant T.E. had passed away in the rental unit and Tenant E.M. had abandoned the rental unit, because there was damage in the unit and the unit had to be cleaned such that the Landlord could not re-rent the unit for May of 2022.

The Landlord submitted the following documentary evidence:

- The Notice stating the Tenants failed to pay January rent
- Proof of Service for the Notice

Analysis

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Based on the undisputed testimony of the Agent and written tenancy agreement, I accept that the Tenants were required to pay \$5,200.00 in rent each month pursuant to the tenancy agreement.

Based on the undisputed testimony of the Agent and in part on the Notice, I accept that the Tenants failed to pay rent for January to May of 2022 for a total of \$26,000.00.

Based on the undisputed testimony of the Agent, I accept the Tenants did not have authority under the *Act* to withhold rent.

However, I find based on the undisputed testimony of the Agent that Tenant T.E. had passed away in the rental unit and Tenant E.M. had abandoned the rental unit by April 20, 2022. Therefore, I find the Tenants were only responsible to pay rent until April of 2022. It may be that the Landlord lost rent due to the condition of the rental unit; however, a claim for loss of rent is different than a claim for unpaid rent and the Landlord did not apply for loss of rent in the Application.

I do find the Landlord is entitled to recover unpaid rent for April because rent for April was due April 01, 2022, when the Tenants were still living in the rental unit, and

because of how late in April the Landlord discovered Tenant T.E. had passed away in the rental unit and Tenant E.M. had abandoned the rental unit.

In the circumstances, I find the Landlord is entitled to recover \$20,800.00 in unpaid rent.

Given the Landlord has been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$20,900.00. The Landlord can keep the \$2,600.00 security deposit pursuant to section 72(2) of the *Act*. I issue the Landlord a Monetary Order for the remaining \$18,300.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$20,900.00. The Landlord can keep the \$2,600.00 security deposit. I issue the Landlord a Monetary Order for the remaining \$18,300.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: August 22, 2022

Residential Tenancy Branch