



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT (Tenants)
 MNR-DR, OPR-DR, FFL (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties (the “Applications”).

The Tenants filed their application May 17, 2022 (the “Tenants’ Application”). The Tenants applied to dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated May 16, 2022 (the “Notice”) and to recover the filing fee.

The Landlord filed their application May 25, 2022 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on the Notice
- To recover unpaid rent
- To recover the filing fee

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

A.W. advised that the Tenants moved out of the rental unit August 02, 2022. A.W. withdrew the request for an Order of Possession.

A.W. sought to request further compensation at the hearing. The Landlord had not amended the Landlord’s Application and therefore I declined to hear a request for further compensation.

A.W. advised the Landlord is seeking to keep the security deposit towards unpaid rent.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence for the Landlord's Application.

A.W. testified that the hearing packages were sent to the Tenants at the rental unit by registered mail June 08, 2022. The Landlord submitted documentary evidence of service with Tracking Numbers 614 and 605 on it. I looked Tracking Numbers 614 and 605 up on the Canada Post website which shows the packages were unclaimed after notice cards were left June 09 and 19, 2022. A.W. testified that the Landlord's evidence was sent to Tenant B.B. by email pursuant to a substituted service decision of the RTB.

Based on the undisputed testimony of A.W., documentary evidence of service and Canada Post website information, I am satisfied the Tenants were served with the hearing package for the Landlord's Application in accordance with section 89(1)(c) of the *Act*. The Tenants cannot avoid service by failing to pick up registered mail. The Tenants are deemed to have received the hearing packages June 13, 2022, pursuant to section 90(a) of the *Act*.

Based on the undisputed testimony of A.W. and an email in evidence, I accept that the Landlord's evidence was sent to Tenant B.B. by email September 15, 2022, pursuant to the substituted service decision issued by the RTB August 29, 2022. Tenant B.B. is deemed to have received the evidence September 18, 2022, pursuant to the substituted service decision. I note that the Landlord did not serve their evidence on Tenant K.J. Further, the Landlord only complied with rule 3.15 of the Rules in relation to the timing of service, and not rule 3.14 of the Rules. However, the Tenants did not appear at the hearing to raise issues with the service of evidence and therefore I admit the evidence.

Rule 7.3 of the Rules states:

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.

Given the Tenants did not appear at the hearing, the Tenants' Application is dismissed without leave to re-apply.

A.W. was given an opportunity to present relevant evidence and make relevant submissions. I have considered all 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 October 15, 2019. Rent was \$2,400.00 per month due on the first day of each month. The Tenants paid a \$1,200.00 security deposit.

A.W. testified that \$1,950.00 in rent is outstanding for each of May, June and July of 2022 for a total of \$5,850.00 outstanding. A.W. testified that the Tenants did not have authority under the *Act* to withhold rent.

A.W. sought an order that the Landlord be permitted to serve any orders issued in this decision on Tenant B.B. by email as allowed in the substituted service decision.

The Landlord submitted bank records, email correspondence and the Notice.

Analysis

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

Section 26(1) of the *Act* states:

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.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants fail to pay rent.

Based on the undisputed testimony of A.W., as well as the documentary evidence referred to above, I find the following.

The Tenants owed \$2,400.00 in rent per month by the first day of each month pursuant to the tenancy agreement. The Tenants lived in the rental unit for May, June and July of 2022; however, failed to pay rent for these months. The Tenants did not have authority under the *Act* to withhold rent for May, June or July of 2022.

The Tenants owe the Landlord \$5,850.00 in unpaid rent and the Landlord is awarded this amount pursuant to section 67 of the *Act*.

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 Tenants owe the Landlord \$5,980.00. The Landlord can keep the \$1,200.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$4,650.00.

Pursuant to section 71 of the *Act*, and given the substituted service decision, I allow the Landlord to serve the Monetary Order issued in this decision on Tenant B.B. at the email address set out in the substituted service decision.

Conclusion

The Landlord is issued a Monetary Order for \$4,650.00. 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: September 27, 2022

Residential Tenancy Branch