



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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 Landlords November 29, 2022 (the “Application”). The Landlords applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”)
- To recover unpaid rent
- To recover the filing fee

The Agent for the Landlords 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 advised that the Tenants abandoned the rental unit February 18, 2023, and therefore the Landlords are not seeking an Order of Possession. This request is withdrawn.

The Landlords submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlords’ evidence.

The Agent testified that the hearing package and Landlords’ evidence were sent to the Tenants at the rental unit January 27, 2023, and Tracking Numbers 010 and 986 relate to this. The Landlords submitted documentary evidence of service. I looked Tracking

Numbers 010 and 986 up on the Canada Post website which shows the packages are unclaimed after two notice cards have been left.

Based on the undisputed testimony of the Agent, documentary evidence of service and Canada Post website information, I am satisfied the Tenants were served with the hearing package and Landlords' evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act") on January 27, 2023. The Tenants cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Tenants are deemed to have received the hearing package and evidence February 01, 2023. I find the Landlords complied with rule 3.1 of the Rules in relation to the timing of service.

Given 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 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. Rent was \$3,000.00 per month due on the first day of each month. The Tenants paid a \$1,500.00 security deposit which the Agent said the Landlords want to keep towards unpaid rent.

The Agent testified that the Tenants owe rent for November of 2022 to February 15, 2023, for a total of \$10,500.00. The Agent testified that the Tenants did not have authority under the *Act* to withhold rent.

The Landlord submitted documentary evidence.

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*.

I accept the undisputed testimony of the Agent and based on it, as well as the documentary evidence, I find the following.

The Tenants were required to pay \$3,000.00 in rent per month by the first day of each month pursuant to the tenancy agreement.

The Tenants did not have authority under the *Act* to withhold rent and therefore had to pay \$3,000.00 per month for November of 2022 to February 18, 2023, when they vacated the rental unit, pursuant to section 26(1) of the *Act*.

The Tenants failed to pay rent for November of 2022 to February 18, 2023.

The Landlords are entitled to recover unpaid rent of \$10,500.00. I allow the Landlords to amend the Application to seek the full amount of rent outstanding pursuant to rule 4.2 of the Rules.

Given the Landlords have 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 Landlords are entitled to \$10,600.00. The Landlords can keep the security deposit pursuant to section 72(2) of the *Act*. The Landlords are issued a Monetary Order for the remaining \$9,100.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlords are entitled to \$10,600.00. The Landlords can keep the security deposit. The Landlords are issued a Monetary Order for the remaining \$9,100.00. 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: March 02, 2023

Residential Tenancy Branch