



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, RP, LRE, OLC
OPR-DR, MNR-DR, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant (Tenant's Application) under the *Residential Tenancy Act* (the Act) on November 9, 2022, seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice);
- An order for the Landlords to complete repairs;
- An order suspending or setting restrictions on the Landlords' right to enter the rental unit; and
- An order for the Landlord to comply with the Act, regulations, or tenancy agreement.

This hearing also dealt with a cross-application filed by the Landlords (Landlords' Application) under the Act on November 17, 2022, seeking:

- Enforcement of the 10 Day Notice;
- Recovery of unpaid rent; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 am on March 23, 2023, and was attended by the Landlords, who provided affirmed testimony. The Tenant did not attend. As the Landlords were present and prepared to proceed, the hearing proceeded based on the Landlords' Application. The Landlords were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The Landlords advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Landlords were asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to

speak. The Landlords were also advised that personal recordings of the proceeding were prohibited and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) state that respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as follows. The Landlords testified that on November 28, 2022, the Notice of Dispute Resolution Proceeding, which contains the Application and the Notice of Hearing, was sent to the Tenant by registered mail at the rental unit address. The Landlords provided me with the registered mail tracking number, which I have recorded on the cover page of this decision. Although the Landlords stated that the registered mail package went unclaimed, I am satisfied based on their affirmed and undisputed testimony and the registered mail tracking number, that the package was sent to the rental unit address and that the Tenant was still residing in the rental unit at that time. As a result, I find that they were deemed served on December 3, 2022, pursuant to section 90(a) of the Act and Policy Guideline #12.

Residential Tenancy Branch (Branch) records show that the NODRP was emailed to the Landlords on November 22, 2022, to be given or sent not later than November 25, 2022. Although the registered mail was sent outside the three-day time period set out in section 59(3) of the Act and rule 3.1 of the Rules of Procedure, I still find it sufficiently served for the purposes of the Act pursuant to section 71(2)(b) of the Act, as it was sent well in advance of the hearing date. I verified that the hearing information contained in the NODRP was correct and note that the Landlords were able to attend the hearing on time using this information. As a result, the hearing of the Landlords' Application proceeded as scheduled pursuant to rules 7.1 and 7.3 of the Rules of Procedure, despite the absence of the Tenant or an agent acting on their behalf. Although the teleconference remained open for the 35-minute duration of the hearing, no one attended on behalf of the Tenant.

As the Landlords denied receipt of the Tenant's NODRP, and the Tenant failed to appear at the hearing of their own Application, I therefore dismiss it without leave to reapply, pursuant to rule 7.3 of the Rules of Procedure.

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

Preliminary Matters

Preliminary Matter #1

The Landlords stated that the Tenant sent them a text message on December 28, 2022, advising them that they had vacated the rental unit. As a result, the matter of possession has been resolved and there was no need for me to assess validity or enforceability of the 10 Day Notice.

Preliminary Matter #2

The Landlords filed an Amendment to the Application for Dispute Resolution (Amendment) on February 28, 2023, and at the hearing they stated that they sent this Amendment to the Tenant at the rental unit address on approximately March 1, 2023. As the Landlords already acknowledged that the Tenant vacated the rental unit on December 28, 2023, I find that the rental unit address was no longer a valid address for service for the Tenant, regardless of the fact that the Landlords stated the Tenant failed to provide them with a forwarding address. As a result, I find that the Amendment was not properly served on the Tenant, and I decline to Amend the Application.

Preliminary Matter #3

At the hearing the Landlords stated that the amount of rent owed increased after the Application was filed. The Application was amended at the hearing pursuant to rule 4.2 of the Rules of Procedure to include the increased rent amount.

Issue(s) to be Decided

Are the Landlords entitled to recovery of unpaid rent?

Are the Landlords entitled to recovery of the filing fee?

Background and Evidence

The Landlords stated that the Tenant was served with the 10 Day Notice as they failed to pay rent when it was due under the tenancy agreement. The Landlords stated that the Tenant sent them a text on December 28, 2022, advising them that they had vacated the rental unit, and that the Tenant currently owes \$2,740.00 in outstanding

rent. The Landlords therefore sought recovery of this amount, as well as recovery of the \$100.00 filing fee.

Analysis

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. No evidence or testimony was presented that the Tenant had a right under the act to deduct or withhold rent. As a result, I find that they did not.

Based on the affirmed and uncontested testimony of the Landlords, I am satisfied that the Tenant owes \$2,740.00 in outstanding rent and I grant them recovery of this amount. As the Landlords were successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I grant the Landlords a Monetary Order in the amount of \$2,840.00 and I order the Tenant to pay this amount to the Landlords.

Conclusion

The Tenant's Application is dismissed in its entirety without leave to reapply.

Pursuant to section 67 of the Act, I grant the Landlords a Monetary Order in the amount of **\$2,840.00**. 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

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: March 23, 2023

Residential Tenancy Branch