



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act). The Landlord's application for:

- A monetary order for unpaid rent,
- Reimbursement of the filing fee.

And the Tenant's application for:

- Return of their security and pet damage deposit that the Landlord is retaining without cause.
- Reimbursement of the filing fee.

Landlord JDB attended the hearing.

Tenant DHW attended the hearing.

Preliminary Matters, Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Tenant testified that they received the Proceeding Package and documentary evidence from the Landlord. As such, I find they are served with the required materials in accordance with the Act.

The Landlord testified that they were not served with the Proceeding Package or evidence for the Tenant's application. The Tenant testified that they did not serve the Proceeding Package or supporting evidence to the Landlord.

Section 59(3) of the Act and Residential Tenancy Branch (RTB) Rule of Procedure 3.1 both require that an applicant serve the respondent with these documents within three days of receiving the aforementioned proceeding package from the RTB.

The Tenant did not do this within the required timeframe, or at all. As such, the Landlord has not been provided notice of this hearing and it would be unfair to proceed with the

hearing. I dismiss the Tenant's application with leave to reapply, due to the service issues described above.

The Landlord clarified that they are no longer seeking compensation of \$2000.00 for unpaid rent for May 2023. They are seeking \$2000.00 of unpaid rent for June 2023. As per Residential Tenancy Branch (RTB) *Rule of Procedure* 4.2, I amend the Landlord's claim to \$2000.00.

Issue(s) to be Decided

- Is the Landlord entitled to monetary order for unpaid rent?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

Evidence was provided that the month to month tenancy started on February 28, 2021, with an agreement of \$2000.00 monthly rent to be paid on the first day of each month. The Tenant paid a security deposit of \$1000.00 and a pet damage deposit of \$1000.00, which the Landlord continues to hold in trust.

The Landlord testified that they received the Tenant's notice to end tenancy (Tenant Notice) on May 1, 2023, after they did not receive rent payment for May 2023 and only after they contacted the Tenant regarding the owed May rent. The Landlord contacted the Tenant on May 1, 2023, at which time the Tenant stated that they will leave the Tenant Notice in their mailbox. The Landlord stated that they picked up from the Tenant's mailbox the Tenant Notice on May 1, 2023.

The Landlord submitted the Tenant's Notice dated April 12, 2023, as part of their documentary evidence. The Tenant Notice indicates the Tenant will vacate the rental unit by May 15, 2023. Both parties agreed that May 2023's rent of \$2000.00 was paid as ordered in a previous Residential Tenancy Branch (RTB) decision. The Landlord is seeking unpaid rent of \$2000.00 for June 2023.

The Tenant testified that they provided their Tenant Notice on April 12, 2023. The Tenant stated there was communication regarding the Tenant Notice and it is untruthful that the notice was not received until May 1, 2023.

Both parties testified that the Tenant vacated the rental unit by May 15, 2023.

The documentary evidence filed by the Tenant shows the Landlord reached out to them on May 1, 2023. The Tenant agreed to leave the Tenant Notice in their mailbox for the Landlord to pickup on May 1, 2023.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

- Is the Landlord entitled to a monetary order for unpaid rent?

Section 45 of the Act states a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and in the day before the day in the month that rent is payable under the tenancy agreement.

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the testimony and documentary evidence before me, I find the Tenant provided the Tenant's Notice to the Landlord on May 1, 2023. I accept the parties may have engaged in a conversation regarding the Tenant's Notice, but the documentary evidence shows it was not served to the Landlord until May 1, 2023. As such, the notice to end tenancy is effective June 1, 2023. Further, the Tenant Notice was not provided the day before in the month that rent was payable under the tenancy agreement as per section 45 of the Act. I find the Landlord incurred the loss of unpaid rent (\$2000.00 for June 2023) due to the actions of the Tenant in violation of the Act and the tenancy agreement.

I grant the Landlord a monetary award of \$2000.00 for unpaid rent for the month of June 2023.

- Is the Landlord entitled to recover the filing fee?

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Landlord a monetary order of \$2100.00 for unpaid rent and to recover the costs of the filing fee.

I dismiss the Tenant's application with leave to reapply due to a service issue.

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: December 4, 2023

Residential Tenancy Branch