



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, O

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m.

The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord D.B. (the landlord) stated that he would be the primary speaker for the landlords.

Rules 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure provides as follows:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord gave undisputed affirmed testimony that the Landlords' Application for Dispute Resolution (the Application) was personally served to the tenant at the tenant's grandmother's residence on September 16, 2017. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Application on September 16, 2017.

The landlord testified that a 10 Day Notice to End Tenancy (the 10 day Notice) was posted to the door of the rental unit on September 09, 2017. In accordance with sections 88 and 90 of the *Act*, I find the 10 Day Notice, identifying \$1,950.00 in rent owing for this tenancy, was deemed served to the tenant on September 12, 2017, three days after its posting.

At the outset of the hearing the landlord testified that they were notified by a female friend of the tenant, on September 14, 2017, that the tenant vacated the rental unit and that the tenant's female friend was interested in renting the property. The landlord stated that this female friend of the tenant was living in the rental unit until sometime in October of 2017. The landlord requested to withdraw their application for an Order of Possession.

The landlords' application for an Order of Possession is withdrawn.

The landlord also requested to amend their monetary claim from \$1,950.00 to \$2,600.00 to reflect the tenant's failure to pay \$650.00 in monthly rent for October 2017, the additional month of unpaid rent waiting for this hearing. Residential Tenancy Rule of Procedure 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave undisputed affirmed testimony that this tenancy began on June 01, 2017, with a monthly rent of \$650.00, due on the first day of each month. The landlord testified that they continue to retain a security deposit in the amount of \$325.00.

The landlord testified that the tenant did not pay the monthly rent for July 2017, August 2017, September 2017 and October 2017. The landlord stated that the tenant moved

out of the rental unit in September 2017 but did not deliver peaceable vacant possession until October 2017, when their female friend vacated the rental unit. As noted above, this friend moved out of the unit sometime in October 2017.

Analysis

I find that I will allow the amendment requested by the landlord as the tenant did not deliver full vacant possession when they left the rental unit and did not communicate with or provide information to the landlord about their female friend who was living in the rental unit with the tenant. I find that this was clearly rent that the tenant would have known about and resulted since the landlords submitted their Application which I have already found was personally served to the tenant.

Section 26 of the *Act* requires a tenant to pay rent to the landlords, regardless of whether the landlords comply with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Based on the undisputed written evidence and affirmed testimony, I find that the landlords are entitled to a monetary award of \$2,600.00, for unpaid rent owing for this tenancy for July 2017, August 2017, September 2017 and October 2017.

As the landlords have been successful in this application, I also allow them to recover their \$100.00 filing fee from the tenant.

Pursuant to section 72 of the *Act*, I allow the landlords to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I grant a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent, the filing fee for this application and to retain the tenants' security deposit:

Item	Amount
Unpaid July 2017 Rent	\$650.00
Unpaid August 2017 Rent	650.00
Unpaid September 2017 Rent	650.00
Unpaid October 2017 Rent	650.00
Less Security Deposit	-325.00
Filing fee for this Application	100.00
Total Monetary Order	\$2,375.00

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 *Residential Tenancy Act*.

Dated: November 29, 2017

Residential Tenancy Branch