



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR LAT PSF FF
Landlord: OPR MNR MNDC

Introduction

This hearing was a cross Application for Dispute Resolution. The participatory hearing was held on November 26, 2018. Both parties each applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord’s attended the hearing and provided testimony. The Tenants did not attend the hearing.

The Landlord stated that he sent the Tenants each a copy of the Notice of Hearing and evidence by registered mail on October 19, 2018. The Landlord stated that he sent one package to the Tenant, K.K., at the rental unit. The Landlord also sent the mother, A.K., who co-signed the tenancy agreement, a copy of the Notice of Hearing and evidence on October 19, 2018. The Landlord sent this second package to A.K. at her place of residence, which he confirmed with her prior to sending it. Pursuant to section 88 and 90 of the Act, I find the Tenants are deemed to have received these documents on October 24, 2018, the fifth day after their mailing.

Further, the Landlord also served his amendment to the Tenants in the same manner described above, by registered mail to their respective addresses, on October 31, 2018. Pursuant to section 88 and 90 of the Act, I find the Tenants are deemed to have received these documents on November 5, 2018, the fifth day after their mailing.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Given that the Tenants failed to attend this hearing, I dismiss their application, in its entirety, without leave to reapply.

Further, the Landlord testified that he does not need an order of possession at this time, pursuant to section 55 of the Act, because the Tenants are already in the process of moving out. The Landlord is just seeking the money he is still owed.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

The Landlord testified that monthly rent is \$4,000.00, and is due on the first of the month. As per the tenancy agreement provided into evidence, the Landlord holds a security deposit in the amount of \$2,000.00. The Landlord stated that the Tenants have stopped paying rent, and have accumulated many strata fines.

The Landlord provided a monetary order worksheet speaking to 4 different items as follows:

1. & 2. \$8,000.00 - Rent

The Landlord stated that the Tenants have failed to pay any rent for October or November of 2018, which leaves \$8,000.00 owing in total for this item.

3. \$2,747.90 – Strata fines

The Landlord stated that the Tenants have accumulated many strata fines, largely for noise. The Landlord provided a worksheet, provided by the strata corporation detailing the amounts and the reasons for these fines. The Landlord stated that the Tenants have been given copies of these fine letters, and they have failed to make any payments towards these amounts, despite having conversations with the Landlord about doing so.

4. \$6,736.51 – Compensation to Landlord for Failing to move-out

The Landlord is looking to be compensated for costs he incurred as a result of having to rent a temporary residence (equivalent size and value) because the Tenant did not move out. The Landlord stated that he served the Tenant with a 10 Day Notice for non-payment of rent on October 5, 2018, and that he was expecting the Tenant to move out by October 15, 2018. The Landlord stated that he was expecting to be able to move into the unit on that day, and since the Tenant failed to pay or show up at this hearing to dispute the 10 Day Notice, he should be compensated for the amounts he had to pay for a place to stay while he waited for the Tenants to vacate.

The Landlord provided copies of the receipt for his accommodation, which specifies that he paid \$143.33 per night over the material time. The Landlord is seeking 47 nights at this rate for the period of October 15, 2018, until November 30, 2018 (when the Tenant is moving out).

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, I find as follows, based on the undisputed evidence and testimony from the Landlord.

I will address the items in the order they were addressed above:

1. & 2. \$8,000.00 - Rent

The Landlord stated that the Tenants have failed to pay any rent for October or November of 2018, which leaves \$8,000.00 owing in total for this item. I find the Landlord has provided sufficient evidence that the Tenants owe this amount.

3. \$2,747.90 – Strata fines

The Landlord stated that the Tenants have accumulated many strata fines, largely for noise. The Landlord provided a worksheet, provided by the strata corporation detailing the amounts and the reasons for these fines. The Landlord stated that the Tenants have been given copies of these fine letters, and they have failed to make any payments towards these amounts, despite having conversations with the Landlord about doing so.

I find the evidence before me sufficiently establishes that the Tenant is responsible for these fines that were levied against his rental unit by the strata. I award the Landlord the full amount for this item.

4. \$6,736.51 – Compensation to Landlord for Failing to move-out

The Landlord is looking to be compensated for costs he incurred as a result of having to rent a temporary residence (equivalent size and value) because the Tenant did not move out. I note the Landlord stated that he served the Tenant with a 10 Day Notice for non-payment of rent on October 5, 2018, and that he was expecting the Tenant to move out by October 15, 2018.

I also note the Landlord provided copies of the receipt for his accommodation, which specifies that he paid \$143.33 per night over the material time. The Landlord is seeking 47 nights at this rate for the period of October 15, 2018, until November 30, 2018 (when the Tenant is moving out).

Having reviewed this matter, I find it important to note that the Tenants abandoned their application to dispute the 10 Day Notice by not attending the hearing today. I also note that the Landlord stated the Tenants never actually served him with the Notice of Hearing they had from applying to cancel the 10 Day Notice. The Landlord believes the Tenant is trying to delay moving out, which is costing him money, as he has to pay for alternative accommodation while he waits for the Tenants to vacate.

I note the Landlord posted the 10 Day Notice to the Tenants' door on October 5, 2018. Pursuant to section 88 and 90 of the Act, I find the Tenants are deemed to have received this Notice on October 8, 2018, the 3rd day after it was posted. Typically, the Tenant would, at this point, have 5 days to pay in full or file an application to cancel the Notice. There is no evidence the Tenants followed through with either, since they did not pay, and have failed to attend the hearing to dispute the Notice. As such, I find the Tenants have accepted that the tenancy was over, as of the corrected effective date of the 10 Day Notice (10 days after deemed receipt of this Notice), which is October 18, 2018.

I find the Tenants are liable for this amount for the period of October 18, 2018 until November 30, 2018. This period is 44 days in duration (rather than 47 as the Landlord has requested), and is compensable at a rate of \$143.33 per day, the rate the Landlord paid to rent an equivalent apartment on a short term basis.

I find the Landlord suffered a substantial financial loss as a result of having to continue to rent an alternative apartment, rather than move into his own unit, which he had planned to do. I find the Landlord is entitled to recover \$6,306.52 which equates to 44 days at a rate of \$143.33 per day, as per the invoice he provided.

As the Landlord's application was successful, and pursuant to section 72 of the *Act* I grant the Landlord the recovery of the cost of the filing fee in the amount of **\$100.00**.

In summary, I find the Landlord is entitled to recover the above noted amounts, which total \$17,154.42.

I authorize the Landlord to retain the \$2,000.00 security deposit to offset what he is owed. I find the Tenants still owe \$15,154.42, and the Landlord is entitled to a monetary order for this amount.

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$15,154.42**. This order must be served on the Tenants. If the Tenants fails to comply with this order the

Landlord may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: November 27, 2018

Residential Tenancy Branch