



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for an order of possession due to a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), for authority to retain the tenants' security deposit, a monetary order for money owed or compensation for damage or loss and for unpaid rent, and for recovery of the filing fee paid for this application.

The landlords, their agent, and tenant PN attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The landlord's agent, (hereafter, "agent"), testified that they served both tenants with their Application for Dispute Resolution and Notice of Hearing by registered mail on July 27, 2019. The landlord provided the copy of the Canada Post Customer Receipt containing the Tracking Numbers to confirm this mailing, shown on the style of cause page of this Decision for tenant NS.

Based upon the submissions of the landlord, I accept the non-attending tenant, NS, was served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing proceeded in that tenant's absence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue

At the beginning of the hearing, the parties confirmed that the tenancy has ended, by virtue of a previous dispute resolution hearing on the landlord's application, on an expedited hearing for an order of possession of the rental unit.

The landlord's application was granted as the landlord was issued the order of possession.

The agent said that the tenants were served the writ of possession on August 8, 2019 and the tenancy ended.

The agent confirmed that the only remaining issue was the monetary claim of the landlord, for unpaid rent.

At the conclusion of the hearing, the agent requested an amendment of the landlord's application, to exclude their request to keep the tenants' security deposit. As a result, I have amended the landlord's application to exclude that request.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants and to recovery of the filing fee?

Background and Evidence

The written tenancy agreement supplied by the landlord shows that this tenancy began on April 15, 2019, monthly rent payable by the tenants is \$2,100.00, due on the first day of the month, and a security deposit of \$1,050.00 was paid by the tenants at the beginning of the tenancy.

The landlord gave evidence that on July 4, 2019, the tenants were served with the Notice, by registered mail, listing unpaid rent of \$3,150.00 owed as of July 1, 2019. The effective vacancy date listed on the Notice was July 19, 2019.

The landlord stated that the tenants did not make any further rent payments and as of the date of the hearing, the tenants owed \$5,250.00 in unpaid rent through August 2019, which is part of his monetary claim in the application.

The landlord has also claimed the amount of \$2,100.00 for loss of rent revenue for September 2019.

Tenant's response-

The tenant submitted that he paid six months in advance of the tenancy. In explanation, he said he paid the co-tenant the cheques and assumed she paid the landlord.

The tenant confirmed that he had not submitted any documentary evidence in advance of the hearing.

I have no evidence before me that the tenants applied to dispute the Notice.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

When a tenant fails to pay rent due pursuant to the terms of the tenancy agreement, the landlord may serve a tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here.

The Notice sets out for the benefit of the tenants that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenants had five days to dispute the Notice by making an application for dispute resolution.

Although the tenant stated he had paid the rent six months in advance, he failed to provide any proof or evidence to verify.

I therefore find the landlord submitted sufficient evidence to prove that the tenants were served the Notice, owed the rent listed, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service.

I therefore find the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case, July 19, 2019.

As to the landlord's monetary claim, I also find that the landlord submitted sufficient, evidence to prove that the tenants owe the amount of \$5,250.00 in unpaid rent through August 2019, due under the tenancy agreement. I grant the landlord a monetary award in this amount, pursuant to section 67 of the Act.

I also grant the landlord recovery of his filing fee of \$100.00, pursuant to section 72(1) of the Act.

I do not grant the landlord monetary compensation for the month of September 2019, as that claim is premature.

Due to the above, I find the landlord is entitled to a total monetary award of \$5,350.00, comprised of outstanding rent of \$5,250.00 through August 2019 and the \$100.00 filing fee paid by the landlord for this application.

I grant the landlord a monetary order for the amount of his monetary award, in the amount of \$5,350.00.

The landlord's monetary claim for loss of rent revenue of \$2,100.00 for the loss of rent revenue for September 2019 is dismissed, with leave to reapply.

Conclusion

The landlord's application for a monetary order for unpaid rent and recovery of their filing fee has been granted.

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

Dated: August 30, 2019

Residential Tenancy Branch