



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNRL-S OPR

Introduction

This hearing was scheduled to convene at 9:30 a.m. on January 14, 2020 concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities, an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing, gave affirmed testimony, and was assisted by a translator who was affirmed to well and truly interpret the proceedings from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of the interpreter's skill and ability.

The line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants joined the call. The landlord advised that each of the tenants was individually served with the Application for Dispute Resolution and notice of this hearing by registered mail on November 23, 2019 and orally provided tracking numbers assigned by Canada Post. The landlord was given the opportunity to provide proof of such service after the hearing had concluded. I have now received an item stamped with the date of November 23, 2019 by Canada Post as well as photographs of 4 envelopes addressed to each of the 4 tenants, all containing a Canada Post date stamp of November 23, 2020 and all, marked "Returned" and "Refused." I am satisfied that all 4 tenants have been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began in the summer of 2016 and the tenants still reside in the rental unit. There is no written tenancy agreement, however the landlord testified that rent was \$1,600.00 per month at the commencement of the tenancy and was increased to \$2,000.00 per month as other tenants moved in. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$800.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a single family dwelling.

The landlord further testified that on November 7, 2019 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit, and a copy has been provided for this hearing. It is dated November 7, 2019 and contains an effective date of vacancy of November 21, 2019 for unpaid rent in the amount of \$2,400.00 that was due on October 1, 2019. The landlord testified that the tenants paid rent for September but October's rent was returned NSF, and no rent has been paid since. The evidentiary material provided by the landlord specifies that: "Rent has not been paid fully for October and nothing has been paid for November." The landlord also testified that the tenants also still owed rent for the summer months of 2019, but no receipts or tenant ledger has been provided for this hearing.

The landlord also testified that the tenants have not served the landlord with an Application for Dispute Resolution disputing the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord seeks an Order of Possession and a monetary order and an order permitting the landlord to keep the security deposit.

Analysis

Firstly, the *Residential Tenancy Act* specifies that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the Notice by filing and serving the landlord with an Application for Dispute

Resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the landlord testified that the tenants have not served the landlord with an Application for Dispute Resolution disputing the Notice, and I have no such application before me. The landlord also testified that the tenants have not paid the rent in full. Therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy. I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*, and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

With respect to the landlord's monetary claim, I am not satisfied of what rent was paid and not paid. The landlord has not provided any evidentiary material such as receipts or a tenant ledger, and I find that the documentation provided does not match the landlord's testimony. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities states that the tenants failed to pay rent in the amount of \$2,400.00 that was due on October 1, 2019 and the landlord testified that the rent cheque for October was returned NSF but there is no evidence of that. Further the landlord testified that a portion was outstanding from the summer of 2019, but again there is no evidence of that and the landlord was not able to provide details of what was paid or when. Further, the landlord's description in the file states that rent has not been fully paid for October, which to me means that some was paid.

I dismiss the landlord's application for a monetary order for unpaid rent and the landlord's application for an order permitting the landlord to keep the security deposit, with leave to reapply. However, since the landlord has been partially successful with the application the landlord is entitled to recovery of the \$100.00 filing fee, and I order that the landlord be permitted to keep \$100.0 of the security deposit held in trust as full recovery.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

The landlord's application for a monetary order for unpaid rent is hereby dismissed with leave to reapply.

I order the landlord to keep \$100.00 of the security deposit held in trust as full recovery of the filing fee, and the landlord's application for an order permitting the landlord to keep the balance of the security deposit is dismissed with leave to reapply.

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: January 14, 2020

Residential Tenancy Branch