



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on January 21, 2020, wherein the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on January 2, 2020 (the "Notice") as well as recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 9:30 a.m. on April 3, 2020. Only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 9:55 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that she served the Tenant with the Notice of Hearing and the Application on February 4, 2020 by email.

Although email was not an accepted form of service at the time the hearing package was served on the Tenant, the Landlord obtained authority to serve the documents in this manner pursuant to an Order for Substituted Service from Arbitrator Maddia on February 3, 2020. I confirm I reviewed the Order in making this my Decision.

I find the Tenant was duly served as of February 4, 2020 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant vacated the rental unit as of February 22, 2020 such that an Order of Possession was no longer required.

The Landlord confirmed her email addresses during the hearing as well as her understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation for unpaid rent?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began August 1, 2019. Monthly rent is \$1,600.00 and the Tenant paid a \$800.00 security deposit.

The Landlord testified that the Tenant failed to pay the full amount of rent for November 2019 leaving a balance of \$650.00 owing. The Tenant also did not pay the December 2019 and the January 2020 rent such that the sum of \$3,850.00 was owing as of January 1, 2020.

The Landlord issued the Notice on January 2, 2020 indicating the sum of \$3,850.00 was outstanding for rent. The Landlord testified that she served the Notice on the Tenant by registered mail sent on January 6, 2020. A copy of the registered mail tracking number is included on the unpublished cover page of this my Decision.

The Landlord stated that the Tenant failed to pay the outstanding rent and failed to apply to dispute the Notice.

The Landlord further testified that the Tenant also did not pay rent for February 2020 and left the rental unit in such a damaged and unclean state that she could not rent it out for March or April 2020.

Analysis

Based on the Landlord's undisputed testimony and evidence before me, and on a balance of probabilities, I find as follows.

The Landlord issued the Notice pursuant to Section 46 of the *Act* which provides as follows:

Landlord's notice: non-payment of rent

46 (1)A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4)Within 5 days after receiving a notice under this section, the tenant may

(a)pay the overdue rent, in which case the notice has no effect, or

(b)dispute the notice by making an application for dispute resolution.

(5)If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit to which the notice relates by that date.

(6)If

(a)a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b)the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

As discussed during the hearing the Tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

Rules about payment and non-payment of rent

26 (1)A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As noted during the hearing, there are only four occasions when a Tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

In the case before me I find the Tenant had no such legal authority to withhold rent.

I therefore find that the Tenant failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act*. The Landlord is entitled to recover the unpaid rent for November 2019 through February 2020. I also find the Landlord is entitled to recover the loss of rent for March and April 2020. I accept her evidence that due to the condition of the rental unit she was not able to re-rent the unit during those months and consequently suffered a loss of rent.

As the Landlord has been successful in her Application, I also find she is entitled to recover the \$100.00 filing fee.

I find that the Landlord has established a total monetary claim of **\$8,750.00** comprised of the following:

Rent for November 2019	\$650.00
Rent for December 2019	\$1,600.00
Rent for January 2020	\$1,600.00
Rent for February 2020	\$1,600.00
Loss of rent for March 2020	\$1,600.00
Loss of rent for April 2020	\$1,600.00
Filing fee	\$100.00
TOTAL AWARDED	\$8,750.00

I order that the Landlord retain the security deposit of \$800.00 in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$7,950.00**. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

Conclusion

The Tenant vacated the rental unit such that an Order of Possession was no longer required.

The Tenant failed to pay rent as required by the tenancy agreement and the *Act* and must compensate the Landlord for the balance owing for November 2019 through February 2020. The Tenant also failed to clean and repair the rental unit such that the Landlord suffered a loss of rent for March and April 2020 (after the Tenant vacated the unit).

The Landlord's request for monetary compensation for unpaid rent and loss of rent is granted. The Landlord is also awarded recovery of the filing fee.

The Landlord may keep the security deposit and interest in partial satisfaction of the claim and is granted a Monetary Order for the balance due.

This Decision is final and binding on the parties, except as otherwise provided under the Act, and 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: April 06, 2020

Residential Tenancy Branch