



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR OPC OPN MNR FF / CNR OLC LAT FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for unpaid rent and utilities pursuant to section 55;
- an order of possession for cause pursuant to section 55;
- an order of possession based on tenant’s written notice to end tenancy pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks and/or to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing.

The parties confirmed this tenancy ended April 30, 2020; therefore, the only outstanding issue is the landlord’s application for monetary compensation for unpaid rent and utilities. During the hearing, the landlord advised he was withdrawing the claim for outstanding utilities.

Preliminary Issue – Amendment requests by the Landlord and Tenant

In the Interim decision dated June 2, 2020 I specifically ordered that my adjournment of the hearing was not an opportunity for parties to amend the existing applications. The tenants submitted an amendment on June 5, 2020, requesting monetary compensation. This amendment was not related to the issues before me and did not comply with the order stipulated in the Interim Decision. This amendment request was not permitted.

The landlord also verbally requested to include a claim for loss of rent for May 2020. The tenant was not provided prior notice of this claim and this amendment request was also not permitted.

Issues

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on July 15, 2019 with a monthly rent of \$3200.00 payable on the 1st day of each month. The tenants paid a security deposit of \$3000.00 at the start of the tenancy which the landlord continues to hold. The tenants had originally given a notice to end tenancy which was to be effective March 31, 2020; however, the tenants did not vacate and issued a new Notice stating an effective vacate date of April 30, 2020. The tenancy ended on April 30, 2020.

The landlord's claim is for outstanding rent in the amount of \$6400.00. The landlord testified that this includes unpaid rent for the months of March and April 2020. The landlord testified the tenants did not pay any rent for these two months. The landlord submitted a Notice to End Tenancy issued to the tenants on March 2, 2020 as proof of the rent not being paid. The landlord also submitted a letter dated February 18, 2020 in which the tenants advise the landlord they would be deducting the security deposit overpayment from the rent payment for March 2020. The landlord submits that this letter is in contradiction to the bank statements submitted by the tenants in which they claim they still paid \$3200.00 in rent for this month. The landlord submits the bank statements only show that the tenants withdrew money from their account, but this money was never paid to the landlord.

The tenants testified that rent was paid in full by cash for both March and April 2020. The tenants submitted bank statement in support. The tenants submit that rent was always paid in cash; however, the landlord never provided receipts. The tenants submit that in February 2020 they even made a written request for the landlord to provide receipts.

Analysis

Section 26 of the Act requires that 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.

Based on the testimony and evidence submissions of the parties, I find the landlord's version of event to be more consistent and credible than that of the tenants. The tenants provided no detail with respect to the dates and times of the alleged cash payments. The bank statements may support that the tenants made a withdrawal but do not support a finding that the cash was then forwarded to the landlord. I find the tenants letter stating they were deducting the security deposit overpayment also contradicts their submission that they paid the rent in full. Further, given that the tenants made a written request to the landlord for rent receipts in February 2020, you would think the tenants would take some additional steps to document any future rent payments if the landlord continued to refuse to issue receipts. The tenants could have at least documented the dates and times of the alleged cash payments or even paid the rent by cheque or some other means.

I accept the landlord's claim for outstanding rent of \$6400.00 for the months of March and April 2020.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$6500.00.

The landlord continues to hold a security deposit of \$3000.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$3500.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$3500.00. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: June 19, 2020

Residential Tenancy Branch