



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Unpaid rent;
- Compensation for damage to the rental unit by the Tenant, their pets, or their guests;
- Recovery of the filing fee; and
- Authorization to retain the security deposit towards money owed.

The hearing was convened by telephone conference call and was attended by the Landlord and the Landlord's spouse, both of whom provided affirmed testimony. Neither the Tenant nor an agent for the Tenant attended. The Landlord and their spouse were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Landlord and their spouse testified that their documentary evidence and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, was posted to the door of the rental unit by both of them on August 1, 2020. The Landlord and their spouse stated that at that time, all of the Tenant's possessions remained in the rental unit and to their knowledge, the Tenant still resided there. The Landlord and their spouse stated that they went by the rental unit on August 4, 2020, to check if the package had been taken off the door, which it had, and

noticed that a moving truck was in the driveway. The Landlord and their spouse stated that they texted the Tenant that day to ask if they were moving out but received no response, and when they went by the rental unit several days later, it was vacant. The Landlord and their spouse stated that it is their belief that the Tenant received their evidence, the Application and Notice of Hearing before they moved out of the rental unit.

Based on the affirmed and uncontested testimony of the Landlord and their spouse, I am satisfied that the Tenant still resided in the rental unit on August 1, 2020, and that the rental unit therefore qualified as a valid address of service for the Tenant at that time. I am also satisfied that the Landlord and their spouse posted the above noted documents to the door of the rental unit on that date. As a result, I find that the Tenant was deemed served with the documentary evidence before me from the Landlord, a copy of the Application and the Notice of Hearing on August 4, 2020, pursuant to section 90(c) of the Act.

Based on the above, I am satisfied that the Landlord complied with the Act and the Rules of Procedure with regards to service of the Application and the Notice of Hearing and the hearing therefore proceeded as scheduled despite the absence of the Tenant, pursuant to rule 7.3 of the Rules of Procedure.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be mailed to them at the mailing address listed in the Application.

Preliminary Matters

The Landlord and their spouse sought to amend the application in the hearing to include additional rent owed since the time the application was filed. The Application was amended accordingly pursuant to rule 4.2 of the Rules of Procedure.

Issue(s) to be Decided

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to compensation for damage to the rental unit by the Tenant, their pets, or their guests?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord authorized to retain the security deposit towards money owed?

Background and Evidence

The Landlord and their spouse stated that the month-to-month tenancy began on June 1, 2019, and that rent in the amount of \$1,200.00 is due on the first day of each month. The Landlord and their Spouse stated that a \$600.00 security deposit was paid by the Tenant at the start of the tenancy, which they still hold.

The Landlord and their spouse stated that they went by the rental unit on August 4, 2020, and noticed that a moving truck was in the driveway. They stated that they texted the Tenant that day to ask if they were moving out but received no response, and that when they went by the rental unit several days later, it was vacant. The Landlord and their spouse stated that they suspect that the Tenant moved out of the rental unit on August 4, 2020, but do not know for sure as the Tenant did not provide them with a proper notice to end tenancy for that date or respond to their text. The Landlord and their spouse stated that the Tenant also failed to provide a forwarding address in writing or to attend a move out condition inspection.

The Landlord and their spouse stated that the Tenant currently owes \$4,800.00 in outstanding rent for March, April, May and July of 2020. They also sought \$600.00, the equivalent of half a month's rent, for August 2020, as the Tenant did not pay rent for August, did not move out of the rental unit until at least August 4, 2020, and left the rental unit in such a state that it needed to be cleaned and repaired before it could be re-rented. The Landlord and their spouse stated that the rental unit was posted for re-rental after it was cleaned and repaired and was subsequently re-rented for October 1, 2020, as they were unable to secure a Tenant for September 2020.

The Landlords also sought \$300.00 in compensation for damage caused to a door in the rental unit, recovery of the \$100.00 filing fee and authorization to withhold the Tenant's \$600.00 security deposit towards the above noted amounts owed.

No one appeared on behalf of the Tenant to provide any evidence or testimony for my consideration at the hearing, despite my finding earlier in this decision that they were

deemed served with a copy of the Application, the Notice of Hearing, and the documentary evidence before me from the Landlord on August 4, 2020, before they vacated the rental unit.

Analysis

Section 26 (1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Section 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. However, it also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss. Further to this, Policy Guideline 16, section C, sets out a four part test for assessing claims for damage or loss.

Based on the uncontested and affirmed testimony of the Landlord and their spouse, I am satisfied that the Tenant owed and failed to pay \$4,800.00 in outstanding rent for March, April, May and July of 2020, that the Tenant caused damage to the rental unit in the amount of \$300.00 and that the Landlord suffered a loss of rent for August in the amount of \$600.00. I am therefore satisfied that the Tenant breached sections 26 and 37(2) of the Act resulting in the above noted losses by the Landlord, and that the Landlord acted reasonably to mitigate their loss. I therefore grant the Landlord \$5,400.00 in rent and \$300.00 in compensation for damage. I also grant the Landlord \$100.00 for recovery of the filing fee pursuant to section 72(1) of the Act.

As I am satisfied that the Tenant has not provided a forwarding address in writing, I find that the requirements under section 38(1) of the Act relating to the return of the security deposit has not been triggered. I therefore grant the Landlord authorization to retain the Tenant's \$600.00 security deposit towards the above noted amounts owed by the Tenant, pursuant to section 72(2)(b) of the Act.

Pursuant to section 67 of the Act, the Landlord is therefore entitled to a Monetary Order in the amount of \$5,200.00; \$5,800.00 owed, less the \$600.00 security deposit retained, and I order the Tenant to pay this amount to the Landlord.

Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$5,200.00**. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant 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. The Tenant is cautioned that costs of such enforcement are recoverable from them by the Landlord.

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

Dated: November 16, 2020

Residential Tenancy Branch