



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1116 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

At the hearing the landlord informed me that, as of 10 November 2014, the tenant was no longer occupying the rental unit. The landlord asked to withdraw his application for the order of possession as it was no longer needed. I allowed this amendment.

The landlord testified that he personally served the tenant with the dispute resolution package on 14 November 2014 at 1620. The landlord said that he saw the tenant visiting with a friend outside the friend's house and handed him the package there. On the basis of this evidence, I am satisfied that the tenant was served with dispute resolution package pursuant to section 89 of the Act.

The landlord submitted evidence in respect of claims for losses and damages under the Act. I informed the landlord at the hearing that as these claims were not properly before me I would not be considering them in the course of this hearing. I informed the landlord that he could file a separate application in respect of these claims.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The landlord and the tenant do not have a written tenancy agreement. The landlord testified that the tenancy began 1 March 2014. Monthly rent, which included utilities, of \$650.00 was due on the first. The landlord collected a security deposit of \$325.00 from the tenant in March 2014.

The 10 Day Notice was dated 1 November 2014 and set out an effective date of 10 November 2014. The 10 Day Notice was issued for \$1,100.00 of outstanding rent. The landlord testified that the tenant had rental arrears of \$450.00 from October and \$650.00 from November that remain unpaid. The landlord testified that he has not received any payments from the tenant since the 10 Day Notice was served to the tenant.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlord issued the 10 Day Notice on the day rent was due. Accordingly, the 10 Day Notice is not valid; however, I consider it contemporaneous evidence of the rent arrears.

The landlord has provided sworn and uncontested testimony that the tenant has unpaid rental arrears totaling \$1,100.00. I find that the landlord has proven his entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$825.00 under the following terms:

| Item | Amount |
|---|-----------------|
| Unpaid October Rent | \$450.00 |
| Unpaid November Rent | 650.00 |
| Less Retained Security Deposit | -325.00 |
| Recovery of Filing Fee for this Application | 50.00 |
| Total Monetary Order | \$825.00 |

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

Dated: December 15, 2014

Residential Tenancy Branch

