



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR / OPC, MNR

Introduction

This hearing was scheduled in response to the landlord's application for an order of possession / and a monetary as compensation for unpaid rent. The landlord attended and gave affirmed testimony. The tenant did not appear.

The landlord testified that the application for dispute resolution and the notice of hearing (the "hearing package") was served by way of registered mail. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail. The Canada Post website informs that the package was "unclaimed" by the tenant and was thereafter returned to the landlord. Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, and pursuant to sections 89 and 90 of the Act which address, respectively, **Special rules for certain documents** and **When documents are considered to have been received**, I find that the tenant has been duly served.

The landlord testified that the tenant vacated the unit on May 16, 2015, and that a new renter now has possession of the unit. Accordingly, I find that the application for an order of possession has effectively been withdrawn.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy is from August 01, 2014 to August 01, 2015. Monthly rent of \$1,550.00 is due and payable on the 31st day of the month preceding the month for which rent is due. A security deposit of \$775.00 was collected.

The landlord issued a 10 day notice to end tenancy for unpaid rent which was served by way of posting to the unit door on April 04, 2015. A copy of the notice was submitted in evidence. The notice documents that \$1,560.00 is overdue on April 01, 2015, and the date shown on the notice by when the tenant must vacate the unit is April 13, 2015. Subsequently, the tenant made no further payment toward rent, he filed no application to dispute the notice, and he vacated the unit on May 16, 2015 without providing a forwarding address.

Pursuant to section 47 of the Act which addresses **Landlord's notice: cause**, the landlord also issued a 1 month notice to end tenancy for cause dated April 11, 2015. The landlord claimed that the notice was served by email on April 12, 2015. A copy of the notice was submitted in evidence. The reason identified on the notice in support of its issuance is as follows:

Tenant is repeatedly late paying rent

Neither did the tenant file an application to dispute the 1 month notice.

As a result of advertising, the landlord succeeded in finding new renters for the unit effective from June 01, 2015.

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent on April 04, 2015. As the notice was served on that same date by way of posting to the unit door, pursuant to section 90 of the Act, which speaks to **When documents are considered to have been received**, I find that the notice is deemed to have been received 3 days later on April 07, 2015. The tenant did not pay the outstanding rent within 5 days of receiving the notice, and the tenant did not file an application to dispute the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. As previously noted, the tenant subsequently vacated the unit on May 16, 2015.

For the aforementioned reasons, I find there is no need for me to give further consideration to the 1 month notice issued by the landlord.

As to compensation, I find that the landlord has established a claim of **\$3,110.00**:

\$10.00: *unpaid rent due on February 28 for March 2015*

\$1,550.00: *unpaid rent due on March 31 for April 2015*

\$1,550.00: *unpaid rent due on April 30 for May 2015*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Pursuant to the above, I order that the landlord retain the security deposit of **\$775.00**, and I grant the landlord a **monetary order** for the balance due of **\$2,335.00** (\$3,110.00 - \$775.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$2,335.00**. This order may be served on the tenant, filed in the Small Claims 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 10, 2015

Residential Tenancy Branch

