



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRISTOL ESTATES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, damage to the rental unit, and to recover the filing fee in addition to authority to retain the security deposit.

Only the Landlord's agent, R.G., appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

R.S. testified served the Tenant with the Notice of Hearing and the Landlord's Application on September 14, 2015 by registered mail. Under the Act documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of September 19, 2015.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

During the hearing R.S. confirmed he was not pursuing an Order of Possession nor was he seeking authorization to retain the Tenant's security deposit; he stated that he did not want to end the tenancy; he simply wished to obtain a Monetary Order and have the Tenant pay what is outstanding. Accordingly, I note his requests for an Order of Possession and authorization to retain the security deposit as withdrawn.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord recover the filing fee?

Background and Evidence

R.G. testified that the tenancy began on July 1, 2013. Monthly rent was payable in the amount of \$850.00. Pursuant to clause 12 of the residential tenancy agreement, the Tenant agreed to pay a late fee of \$25.00 per month.

R.G. stated that the Tenant paid \$775.00 in August and then \$600.00 in September of 2015 such that \$325.00 remained outstanding as of September 1, 2015. On September 2, 2015 the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, also indicating \$325.00 remained outstanding (the "Notice")

The Landlord confirmed the Notice was posted to the rental unit door on September 2, 2015 at 2:00 p.m. Section 90 of the *Residential Tenancy Act* provides that documents served in this manner are deemed served three days later; accordingly, I find the Tenant was served as of September 5, 2015. Pursuant to section 53 of the *Residential Tenancy Act*, the effective date of the Notice automatically corrects to September 15, 2015.

The Landlord testified that the Tenant then paid \$850.00 on October 1, 2015 as well as a further \$250.00 and \$45.00 in the month of October. As such, the Tenant paid \$295.00 of the \$325.00 which was owing, leaving \$30.00 outstanding. The Landlord confirmed the Tenant paid \$850.00 on November 1, 2015 but as he had not paid \$30.00 outstanding, and pursuant to accepted accounting practices, he applied \$30.00 to the outstanding amount and the \$820.00 to the November 1, 2015 rent, leaving \$30.00 owing for November.

At the hearing the Landlord confirmed he also sought recovery of \$75.00 which included \$25.00 monthly late fees for September, October and November. He also requested recovery of the \$50.00 filing fee.

Analysis

Based on the above, the Landlord's undisputed testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and 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.

Under section 26 of the *Residential Tenancy Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some

authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlord has established a total monetary claim of **\$155.00** comprised of \$30.00 in outstanding rent, \$75.00 for late fees and the \$50.00 fee paid by the Landlord for this application. I grant the Landlord a Monetary Order under section 67 for the **\$155.00** as requested. This Order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Landlord was aware he is entitled to an Order of Possession yet he confirmed he did not wish to end the tenancy at this time; as such the tenancy will continue until ended in accordance with the *Residential Tenancy Act*. **The Tenant is to pay the \$155.00 as Ordered by no later than November 30, 2015**, failing which the Landlord is at liberty to issue a 1 Month Notice to End Tenancy for Cause pursuant to section 47(1)(l)(ii)

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy.

The Landlord is granted a Monetary Order for \$155.00 representing \$30.00 in unpaid rent, \$75.00 in late fees and the \$50.00 filing fee. **The Tenant is to pay the \$155.00 to the Landlord by no later than November 30, 2015** failing which the Landlord is at liberty to issue a 1 Month Notice to End Tenancy for Cause pursuant to section 47(1)(l)(ii).

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: November 17, 2015

Residential Tenancy Branch

