



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR

For the landlord – OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a Notice to End Tenancy for unpaid rent or utilities. The landlord applied for Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord KB attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Is the tenant entitled to an Order to have the Notice to End Tenancy cancelled?
- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on November 15, 2015. The rent for this unit is \$750.00 per month due from the 15th to the 15th of each month. The tenant paid a security deposit of \$375.00 at the start of the tenancy.

The landlord testified that the tenant failed to pay all the rent due on December 15, 2015 leaving an unpaid balance of \$350.00. The tenant failed to pay the rent due on January 15, 2016 and February 15, 2016 leaving a total unpaid amount of \$1,850.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on February 16, 2016. The landlord testified she attempted to serve the tenant in person but despite the tenant being at home on February 16, 2016 she would not answer her door so the Notice was posted under the tenant's door with a witness. The Notice informed the tenant that she had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on March 16, 2016. The tenant did not pay the outstanding rent but did file an application to dispute the Notice. Since that time the tenant did make a payment of \$145.00 on March 02, 2016 but has failed to pay rent that was due on March 15, 2016 of \$750.00. The total amount of unpaid rent is now \$2,455.00.

The landlord has applied to retain the tenant's security deposit of \$375.00 to be used in partial payment of the rent arrears. The landlord has also applied for an Order of Possession to take effect on March 31, 2016.

The tenant testified that she agreed she does owe the rent as stated by the landlord. The tenant testified that she had an incident in January which left her unable to work for a month. The tenant has exhausted all attempts to get the rent owed and any money she has obtained went to the landlord. The tenant testified that she went to income assistance and received a payment yesterday of \$700.00 and will have another \$1,000.00 next week.

The tenant seeks to have the Notice cancelled as she is now working and should be up to date on her rent by the end of March, 2016.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which states:

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.

I am satisfied from the undisputed evidence before me that there is outstanding rent since December, 2015 of \$2,455.00. Consequently, it is my decision that the landlord is entitled to recover this amount and will receive a Monetary Order pursuant to s. 67 of the *Act*.

I Order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$375.00 in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$100.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$2,455.00
Filing fee	\$100.00
Less security deposit and accrued interest	(-\$375.00)
Total amount due to the landlord	\$2,180.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted under the tenant's door and the tenant agreed she received the Notice, I find the Notice was served for the purpose of this *Act* and is deemed to have been served three days after it was placed under the door. The tenant did file an application to dispute the Notice; however, the tenant agreed the rent arrears were not paid within five days.

Based on the foregoing, I find the landlord has established their claim for an Order of Possession which will become effective on March 31, 2016 pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$2180.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the tenant; if the tenant fails to comply with the Order, The Order is enforceable through the Provincial (Small Claims) Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favor of the landlord effective at 1.00 p.m. on March 31, 2016. This Order must be served on the tenant; if the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The tenant's application is dismissed without leave to reapply.

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: March 16, 2016

Residential Tenancy Branch