



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MONTELLO HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, dated March 29, 2016 (the "Application"). The Landlord is seeking the following relief pursuant to the *Residential Tenancy Act* (the "Act"): a monetary order for unpaid rent or utilities; an order to keep all or part of the security deposit; an order of possession for unpaid rent or utilities; and an order for recovery of the filing fee.

The Landlord was represented at the hearing by their agent, M.W. The Tenant appeared at the hearing on her own behalf, accompanied by her son, B.P., who was not affirmed and did not give evidence. Both M.W. and the Tenant provided their solemn affirmations.

The parties were given the opportunity to provide their evidence orally and in documentary form. A summary of the evidence, derived from the Landlord's documentary evidence and the affirmed testimony of both parties, is provided below. I have included only that evidence which is relevant to the hearing.

The Landlord provided documentary evidence that the Notice of Dispute Resolution Proceeding (the "Notice") was sent to the Tenant by UPS on March 30, 2016. The tracking information provided indicates it was accepted by the Tenant on March 31, 2016. During the hearing, the Tenant acknowledged she had received the Notice and the Landlord's evidence package. I am satisfied that the Tenant was duly served with the Notice.

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 and Procedural Matters

The Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 2, 2016 (the “10 Day Notice”). Subsequently, on March 15, 2016, the Landlord served the Tenant with a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”). During the hearing, the Tenant acknowledged receipt of both.

As this dispute has been disposed of on the basis of the Tenant’s failure to pay rent when due, I have not considered the merits of the 1 Month Notice.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
2. Should the Landlord be granted an order to retain all or part of the security deposit?
3. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
4. Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord submitted into evidence a copy of a written residential tenancy agreement, signed by the parties on November 26, 2014 (the “Tenancy Agreement”). The Tenancy Agreement confirms a one-year fixed-term tenancy ended on December 31, 2015, and continued on a month-to-month basis thereafter. Rent in the amount of \$900.00 per month is due and payable on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$450.00.

The Landlord provided documentary evidence and oral testimony confirming the Tenant was served with the 10 Day Notice on March 2, 2016. During the hearing, the Tenant acknowledged receipt on that date.

The documentary evidence and affirmed oral testimony of M.W. indicates the Tenant is in arrears of rent in the amount of \$200.00 for March 2016, and \$900.00 for April 2016. In addition, M.W. submits the Tenant has been repeatedly late paying rent during the tenancy.

On behalf of the Landlord, M.W. requests that the Landlord be entitled to recover the \$100.00 filing fee paid to bring this application.

The Tenant advised she is a single mother and has had a difficult time making ends meet. However, she agreed she owes the rent described above. The Tenant advised that she has planned to leave the rental unit on May 1, 2016, having secured rental accommodation elsewhere. The Tenant stated the Landlord can keep the security deposit as has been requested.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on the balance of probabilities, I find the following:

Section 26 of the Act requires tenants to pay rent when it is due under the tenancy agreement, unless there exists a right under the Act to deduct all or a portion of it. The Landlord's evidence confirms, and I find, that the Tenant has not paid rent in full for March and April 2016. There is no evidence before me that the Tenant had authority under the Act to reduce or refuse to pay rent.

In addition, section 46 of the Act requires a tenant to pay overdue rent or dispute a notice within five days after being served. Failure to do either of these leads to the conclusive presumption that the tenant has accepted the end of the tenancy. The Tenant has not paid rent or filed an application to dispute the notice. Accordingly, pursuant to section 46, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice.

In light of the affirmed oral testimony of the parties, and the documentary evidence submitted by the Landlord, I find the Tenant owes the Landlord rent in the amount of \$200.00 for March 2016, and rent in the amount of \$900.00 for April 2016.

The Landlord has applied to keep all or part of the security deposit (\$450.00), which will be deducted from the monetary order granted.

Having been successful in the application, I find the Landlord is also entitled to repayment of the \$100.00 filing fee.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$750.00, which is calculated as follows:

March rent owing:	\$200.00
April rent owing:	\$900.00
Filing fee:	\$100.00

<i>LESS</i> security deposit	\$450.00
TOTAL:	\$750.00

The Landlord also seeks an order of possession. In light of the above, and pursuant to section 55 of the Act, I find the Landlord is entitled to an order of possession, which will be effective two days after service on the Tenant.

Conclusion

The Tenant has not paid rent when due under the terms of the Tenancy Agreement. In addition, the Tenant did not, within five days of receipt of the 10 Day Notice, pay rent or dispute the 10 Day Notice. The Tenant's own oral testimony was that rent has not been paid as described above, and advised she would be leaving the rental unit on May 1, 2016.

Accordingly, I grant the Landlord a monetary order in the amount of \$750.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Further, I grant the Landlord an order of possession, which will be effective two days after service on the Tenant. This Order may be filed in the Supreme 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: April 29, 2016

Residential Tenancy Branch