



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UPTOWN KIWANIS SENIOR CITIZENS HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord's representatives appeared at the hearing. C.I. and C.W. gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

R.L. testified that he personally served the Tenant with the Notice of Hearing and the Landlord's Application for Dispute Resolution on April 15, 2016 approximately 2:30 p.m. Accordingly, I find the Tenant was duly served as of *.

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.

Issues to be Decided

1. Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement.

The tenancy began June 2, 2010. Monthly rent was payable in the amount of \$820.00 at the beginning of the tenancy but was \$903.00 at the time of the hearing. A security deposit in the amount of \$410.00 was paid on June 2, 2010.

The Tenant failed to pay rent for the month of April 2016. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on April 7, 2016 indicating the amount of \$1,006.00 was due as of April 1, 2016 (the "Notice").

C.I. testified that the \$1,006.00 noted on the Notice comprises of the following:

Rent for April 2016	\$903.00
February storage fee	\$10.00
March storage fee	\$10.00
April storage fee	\$10.00
January N.S.F. fee	\$25.00
February N.S.F. fee	\$23.00
April N.S.F. fee	\$25.00
TOTAL	\$1,006.00

Based on the testimony of R.L. and the filed proof of service, I find that the Tenant was personally served with the Notice on April 7, 2016.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, April 12, 2016. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant failed to pay the outstanding rent within five days, and failed to apply for dispute resolution.

C.I. testified that on April 27, 2016 the Tenant paid the sum of \$902.00 leaving a balance of \$104.00 owing. In the within hearing the Landlord sought compensation of the \$104.00 as well as the \$100.00 filing fee. The Landlord also requested an Order pursuant to section 38 that they be permitted to retain the sum of \$204.00 from the Tenant's \$410.00 security deposit as payment of this amount.

Analysis

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

The Tenant did not paid the outstanding rent within five days of receipt of the Notice 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 Act, the Tenant must not withhold rent, 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 is entitled to an Order of Possession 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.

I find that the Landlord has established a total monetary claim of \$204.00 comprised of the sum of \$104.00 outstanding as noted on the Tenant Leger and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord retain \$204.00 from the security deposit of \$410.00. The Landlord shall continue to hold the balance of \$206.00 in trust for the Tenant.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession and has established a monetary claim in the amount of \$204.00. The Landlord may retain \$204.00 from the Tenant's security deposit towards payment of the amount awarded.

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: May 05, 2016

Residential Tenancy Branch