



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOTAL CONCEPT DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, and to recover the filing fee from the Tenant.

An agent for the Landlord appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. There was no appearance by the Tenant during the five minute hearing or any submission of evidence prior to the hearing.

The Landlord's agent testified that the Tenant was served with a copy of the Application and the Notice of Hearing documents for this hearing on November 20, 2016 by registered mail. This was sent to the forwarding address provided by the Tenant at the end of the tenancy on the move-out condition inspection report.

The Landlord provided a copy of the Canada Post tracking number as evidence to support this method of service. In the absence of any evidence from the Tenant to dispute this, I find the Landlord's agent served the Tenant pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act") with the documents for this hearing.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord's agent, I find the Tenant was deemed served with the required documents on November 25, 2015 pursuant to the Act. The hearing continued in the absence of the Tenant.

At the start of the hearing, the Landlord's agent confirmed that they did not require an Order of Possession as the tenancy had already ended and they had received back vacant possession of the rental unit. Therefore, I dismissed this portion of the Landlord's Application.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent?
- Is the Landlord entitled to late rent fees?

Background and Evidence

The Landlord's agent testified that this tenancy began on March 1, 2013 for a fixed term of one year after which it continued a month to month basis. A written tenancy agreement was completed and shows that rent payable under the agreement was established at \$1,500.00 on the first day of each month. The Tenant paid a \$750.00 security deposit and a \$250.00 pet damage deposit on March 1, 2013. These are collectively referred to as the "Deposits" in this decision.

The Landlord's agent testified that the Tenant paid late rent for August 2015, making payment on August 15, 2015 instead of August 1, 2015. The Tenant then failed to pay any rent for September and October 2015. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on October 14, 2015. The Notice was provided into evidence and shows a vacancy date of October 27, 2015 due to \$3,075.00 in unpaid rent and late rent fees. The Notice was posted on the Tenant's door.

The Tenants did not dispute the Notice and the Landlord's agent testified that to her knowledge the Tenants vacated the rental unit by November 2, 2016 without paying the rental arrears of \$3,000.00. The Landlord's agent testified that the Tenant had given written permission on the move-out condition inspection report to keep the Deposits and offset them against the unpaid rent owing.

The Landlord also seeks to recover three late rent fees for August, September, and October 2015 pursuant to section 9 of the addendum to the tenancy agreement which requires the Tenant to pay a \$25.00 fee for late rent payments.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. I find that, based on the Landlord's agent's undisputed written evidence and oral testimony, the Tenant owes the Landlord unpaid rent in the amount of \$3,000.00 as claimed by the Landlord. As the Tenants have already provided the Landlord with written consent to keep their security deposit pursuant to Section 38(4) (a) of the Act, this amount is reduced to \$2,000.00.

Section 7(d) of the *Residential Tenancy Regulation* allows a landlord to charge a fee of no more than \$25.00 for late payment of rent which is documented in a tenancy agreement. Therefore, in accordance with section 9 of the addendum to the signed tenancy agreement between the parties, I find there is sufficient evidence to prove that the Landlord is entitled to the three late rent fees claimed in the amount of \$75.00.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$50.00 filing fee for the cost of having to make this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$2,125.00 (\$2,000.00 + \$75.00 + \$50.00).

Conclusion

The Tenant has failed to pay rent. Therefore, the Landlord is granted a Monetary Order pursuant to Section 67 of the Act in the amount of **\$2,125.00**. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make voluntary payment.

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 21, 2016

Residential Tenancy Branch