



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord. The landlord testified that the tenant was served with the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on May 18, 2016. The landlord has provided a copy of a Canada Post cash register receipt bearing that date as well as a Registered Domestic Customer Receipt addressed to the tenant, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on April 5, 2016 and expires on September 30, 2016. The tenant still resides in the rental unit. Rent in the amount of \$550.00 per month is payable on the 1st day of each month and the landlord told the tenant that the pro-rated amount of \$458.00 was due for the first partial month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$275.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The landlord also testified that the tenant paid a portion of the pro-rated rent for April, 2016 but has not paid any rent since. The tenant paid \$300.00 toward April rent, leaving \$158.00 outstanding and \$1,100.00 owing for May and June.

The landlord served the tenant with a 10 day Notice to End Tenancy for Unpaid Rent or Utilities on May 2, 2016 by posting it to the door of the rental unit. A copy has been provided, and it is dated May 2, 2016 and contains an effective date of vacancy of May 12, 2016 for unpaid rent in the amount of \$158.00 that was due on April 6, 2016. The tenant has not served the landlord with an application for dispute resolution disputing the notice and no rent has been paid since the notice was served.

The landlord seeks an Order of Possession, a monetary order for unpaid rent totalling \$1,258.00, recovery of the \$100.00 filing fee and an order permitting the landlord to keep the security deposit in partial satisfaction.

Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice by filing an application for dispute resolution. If the tenant does neither within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date contained in the notice. In this case, the landlord testified that no rent has been paid since the beginning of the tenancy, other than an initial \$300.00. The landlord also testified that the tenant has not served the landlord with an application for dispute resolution, and I have no such application before me. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective

date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

I also accept the undisputed testimony of the landlord that the tenant is in arrears of rent the sum of \$158.00 for April, \$550.00 for May and \$550.00 for June, 2016, for a total of \$1,258.00.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$275.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference in the amount of \$1,083.00.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep the \$275.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,083.00.

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 16, 2016

Residential Tenancy Branch