Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant via registered mail on December 17, 2015. The registered mail was returned to the landlord as it was unclaimed. The landlord testified that the address used for service was the tenant's address of residence, the tenant's father's house, at the time of mailing as confirmed by way of text messages exchanged between the parties. The landlord provided me with copies of the text messages, the registered mail envelope returned to the landlord, and evidence to demonstrate the address of the tenant's father.

Section 90 of the Act deems a person to be in receipt of documents five days after mailing even if they refuse to accept or pick up mail so that the person cannot avoid service. I was satisfied that the l landlord used a service address where the tenant was residing at the time of mailing and I deemed the tenant to be served five days after December 17, 2015. Accordingly, I proceeded to hear from the landlord without the tenant present.

I noted that there was no documentary evidence other than the registered mail receipt in the file before me. The landlord testified that she had delivered her evidence to the Residential Tenancy Office several months prior. I authorized the landlord to re-submit the evidence and I proceeded to hear from the landlord orally. I have made this decision considering the landlord's oral evidence and the documentary evidence that was received two day later.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, as claimed?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced March 1, 2014 on a month to month basis. The tenant paid a security deposit of $550.00 and the monthly rent was $1,100.00.

The landlord testified that the tenant fell behind in paying rent due to personal circumstances. The landlord was trying to be accommodating for several months but the balance of outstanding rent grew considerably and on August 28, 2015 the landlord sent a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant via registered mail. The registered mail was unclaimed and returned to the landlord. The 10 Day Notice indicates that rent of $7,750.00 was outstanding as of August 1, 2015 and had a stated effective date of September 7, 2015. The tenant did not pay the outstanding rent except a $400.00 payment was received from the tenant's father on September 15, 2015. The tenant vacated the rental unit on October 3, 2015.

By way of this application the landlord seeks to recover unpaid rent of $6,850.00. In support of this amount the landlord provided a copy of the tenancy agreement, rent receipts issued for payments received, and a listing of payments received from or on behalf of the tenant during the tenancy and subtracted the sum of payments from the rent payable for the 19 months of tenancy that ran from March 2014 through September 2015. The landlord also provided copies of rent receipts issued for payments. In trying to reconcile the amount appearing on the 10 Day Notice and the landlord's ledger, the landlord acknowledged that the amount appearing on the 10 Day Notice was over-stated due to an adding error.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Upon consideration of the undisputed evidence before me, both orally and in the form of documentation, I accept the landlord's position that the landlord is owed rent of $6,850.00 by the tenant for months up to and including September 2015. Therefore, I grant the landlord's request to recover this amount from the tenant.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord. I also award the landlord recovery of the $100.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid rent up to and including September 2015	$6,850.00
Filing fee	100.00
Less: security deposit	(550.00)
Monetary Order for landlord	$6,400.00

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of $6,400.00 to serve and enforce upon the tenant.

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 30, 2016

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Residential Tenancy Branch