



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on January 1, 2014. Rent of \$1,150.00 is currently payable on the first day of each month. At the outset of the tenancy the Landlord collected \$550.00 as a security deposit. The Tenant failed to pay rent for June 2016 and on June 9, 2016 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the “Notice”). The Tenant failed to pay rent when due for July 2016.

On July 14, 2016 the Tenant paid the Landlord the rent for June and July 2016 plus \$100.00 for a late rent fee at the request of the Landlord. The tenancy agreement does not provide for a late fee. The Landlord gave the Tenant a receipt for “use and occupancy only” and informed the Tenant that the Landlord would still pursue an order of possession.

The Landlord claims an order of possession for August 31, 2016 in order to provide the Tenant with more time to find another rental unit.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Based on the undisputed evidence of the Landlord I find that the Landlord gave the Tenant the Notice, the Tenant did not dispute the Notice and the Tenant did not pay the outstanding rent within 5 days receipt of the Notice. As a result I find that the Landlord is entitled to an order of possession as claimed.

Section 7 of the Residential Tenancy Regulations provides that a landlord may charge a late rent fee of no more than \$25.00 and this fee must be provided for in the tenancy agreement. As there is no provision for a late fee I find that the Landlord collected \$100.00 from the Tenant without any basis under the Act. I therefore order the Landlord to return the \$100.00 to the Tenant forthwith or the Tenant may deduct this amount from August 2016 rent. As the Landlord acted without right in collecting the \$100.00 as a late fee, I decline to award the Landlord recovery of the filing fee.

Conclusion

I grant an order of possession to the Landlord effective 1:00 p.m. on August 31, 2016.

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: July 27, 2016

Residential Tenancy Branch

