



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF; CNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (the "Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant did not participate in the conference call hearing to present her claim; consequently the tenant's entire application is dismissed without leave to reapply.

The landlord and the landlord's agent (the "Agent") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The agent indicated that on June 25, 2016 the landlord's application for dispute resolution was sent to the tenant via registered mail. The agent provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the agent and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has

been deemed served with the application on June 30, 2016, the fifth day after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that the tenancy began on June 1, 2016 on a fixed term basis. Rent in the amount of \$2,100.00 is payable on the first of each month. The tenant remitted \$1,050.00 for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

The landlord testified the tenant was served with the landlord's 10 Day Notice dated June 10, 2016 by way of posing to the rental unit door where the tenant resides. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's 10 Day Notice on June 13, 2016 three days after it was posted.

The 10 Day Notice was issued for unpaid rent in the amount of \$2,100.00 due on June 1, 2016. The notice indicates an effective move-out-date of June 20, 2016.

The landlord seeks a monetary order of \$4,200.00 for unpaid rent from June 2016 to July 2016. The landlord claimed that the tenant has not paid any rent for the above two months.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's undisputed testimony, I find the tenant did not pay the overdue rent and further find the notice complies in form and content. The effective date of June 20, 2016 on the 10 Day Notice is corrected to June 23, 2016. As the tenant's application has been dismissed I find that the landlord is entitled to a two (2) Day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$2,100.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from June 2016 to July 2016. Therefore, I find that the landlord is entitled to \$4,200.00 in rent.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$1,050.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$3,150.00. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$3,250.00.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

The landlord's application for an order of possession is granted effective two (2) days after service on the tenant.

I issue a monetary order in the landlord's favour in the amount of \$3,250.00 against 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: July 25, 2016

Residential Tenancy Branch

