



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHERLOCK ENTERPRISES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant.

Both parties appeared gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issues to be Decided

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

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that the tenant has not paid any rent since they moved in to the rental unit. The agent stated that the security deposit cheque of \$462.50 and the prorated rent cheque for May 2016 of \$180.00 were returned by the financial institution.

The landlord's agent testified that no rent for June 2016 was paid and the tenant was served in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on June 10, 2016. The landlord's agent stated that the tenant also failed to pay rent for July 2016 and August 2016. The landlord seeks to recover unpaid rent in the total amount of \$2,955.00.

The landlord's agent testified that they also want to recover of the financial fees that they had to pay for the two cheques issued by the tenant that were non cashable which was \$48.50 for each transaction. The landlord seeks to recover the amount of \$97.00.

The landlord's agent testified that they also seek to recover late fees, and administrative fee for having to process the returned cheques. The agent stated that they are allowed to charge \$25.00 for each occurrence.

The tenant acknowledged that they received the notice to end tenancy and that they did not pay the rent or dispute the notice. The tenant indicated they were having difficulties with money owed to their employer.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

The tenant has not paid the outstanding rent and did not apply to dispute the notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

In this case, the tenant has admitted rent was not paid in the total amount of \$2,955.00. I find the tenant breached the Act, when they failed to pay rent and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for the above mentioned months in the total amount of **\$2,955.00**.

I am also satisfied that the landlord is entitled to recover service charges by a financial institution to the landlord for the return of the tenant's cheques, pursuant to section 7(c) of the Residential Tenancy Act Residential Tenancy Regulation (the "Regulation") in the total amount of **\$97.00**.

However, I have read the tenancy agreement and there is no agreement that indicates that the tenant would be responsible to pay late fees or administrative fees for processing the non-cashable cheques. While the section 7 of the Regulations allows for these types of fees, they must be included in the tenancy agreement under section 7(2) of the Regulation. As a result, I find the landlord is not entitled to late fees or administrative fees. Therefore, I dismiss this portion of the claim.

I find that the landlord has established a total monetary claim of **\$3,152.00** comprised of unpaid rent, the bank fees and the \$100.00 fee paid by the landlord for this application. The landlord is granted a formal order under section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant .

Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession and a monetary order for unpaid rent.

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: August 15, 2016

Residential Tenancy Branch