



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 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 pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 0911 in order to enable the tenant to connect with this teleconference hearing scheduled for 0900. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that she personally served the tenant with the dispute resolution package the week of 27 June 2016. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

The landlord testified that she served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on or about 6 June 2016 by posting that notice to the tenant's door. On the basis of this evidence, I am satisfied that the tenant was deemed served with the 10 Day Notice pursuant to sections 88 and 90 of the Act.

Preliminary Issue – Mootness

At the hearing the landlord informed me that the tenant has vacated the rental unit. As the tenant has returned possession of the rental unit to the landlord, there is no need for me to consider the issue of possession as the issue is now moot. As such, I decline to proceed with the landlord's request for an order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 3 June 2016. Monthly rent in the amount of \$975.00 was due on the first. The parties entered into a written tenancy agreement on 1 June 2016. The landlord attempted to collect a security deposit, but the cheque did not clear.

On 6 June 2016 the landlord issued the 10 Day Notice. That notice set out an effective date of 18 June 2016. The 10 Day Notice set out that the tenant had failed to pay rent in the amount of \$975.00 that was due 3 June 2016.

The landlord testified that the tenant vacated the rental unit on or about 7 July 2016.

The landlord testified that the tenant did not make any payments towards rent for the entirety of the tenancy. The landlord testified that she was not aware of any reason that would entitle the tenant to deduct any amount from rent.

The landlord testified that she did not take any steps to rerent the unit. The landlord testified that her sister will begin to occupy the rental unit in September.

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

In accordance with the tenancy agreement, the tenant owed rent in the amount of \$975.00 at the commencement of the tenancy. The tenant failed to pay that amount. The landlord has proven her entitlement to recover the amount of unpaid rent for June in the amount of \$975.00.

Pursuant to subsection 57(3) a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. Pursuant to subsection 46(5) of the Act, the tenant was presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. As such, the landlord is not entitled to "rent" as such for July; however, the landlord is entitled to compensation from the tenant for her use and occupancy of the rental unit. On this basis, the landlord is entitled to

recover \$220.16 for the tenant's use and occupation of the rental unit for the period 1 to 7 July 2016.

Further, pursuant to section 67 a landlord is entitled to be compensated for his or her rental loss. A claim for loss is subject to a duty of mitigation pursuant to section 7(2). The landlord did not attempt to rerent the rental unit and intends to use the rental unit for a family member. For this reason, the landlord has failed to show that she mitigated her loss for July. The landlord is not entitled to recover a rent loss for the remainder of July as she made no attempts to rerent the unit.

As the landlord has been successful in this application, she is entitled to recover the filing fee paid from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,295.16:

Item	Amount
Unpaid June Rent	\$975.00
July Use and Occupancy	220.16
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1,295.16

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: August 08, 2016

Residential Tenancy Branch