



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, FF (Landlord's Application)
 CNC, CNR, FF, LAT, LRE, RP, ERP, MNDC (Tenant's Application)

Introduction

This hearing convened as a result of cross applications. In the Application for Dispute Resolution filed by the Landlord on July 12, 2016, he indicated he sought an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

The Tenant also applied for dispute resolution, although she failed to attend the hearing. Accordingly, the Tenant's application is dismissed without leave to reapply.

Only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that he served the Tenant with the Notice of Hearing and his Application materials on July 28, 2016 by registered mail. A copy of the registered mail tracking number is provided on the cover page of this my decision. Under the *Act* documents served this way are deemed served 5 days later; accordingly, I find the Tenant was duly served as of August 2, 2016 and I proceeded with the hearing in her absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Landlord testified that on or about August 15, 2016 the Tenant vacated the rental unit. He stated that on this date he received an envelope in the mail with a letter from the Tenant dated August 10, 2016 as well as a key for the rental unit. The August 10, 2016 letter was also provided to the residential tenancy branch and received on August 16, 2016 and indicates the Tenant vacated the unit.

As the Tenant has vacated the rental unit an Order of Possession was no longer required.

Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to monetary relief?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated as follows. This one year fixed term tenancy began August 1, 2012 to July 31, 2013 following which it continued on a month to month basis. Monthly rent was payable in the amount of \$750.00 and was raised to \$766.50 in October 2014 by Notice of Rent Increase dated June 3, 2014 (which was introduced in evidence). A security deposit in the amount of \$375.00 was paid at the start of the tenancy.

The Landlord testified that for reasons unknown to him, the Tenant paid rent in the amount of \$765.50, despite the rent being raised to \$766.50. The Landlord stated that he did not make an issue of this and accepted the rent as paid in the amount of \$765.50.

The Tenant failed to pay rent for the month of July 1, 2016. In response the Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on July 2, 2016 in which the amount of \$765.50 was noted as due as of July 1, 2016 (the "Notice").

The Landlord testified that the Tenant was served with the Notice on July 2, 2016 by registered mail. As previously noted in this my Decision, section 90 of the *Act* provides that documents served in this manner are deemed served five days later; accordingly, I find that the Tenant was served with the Notice as of July 7, 2016.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, July 12, 2016. The Notice also explains the Tenant

had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant filed a Tenant's Application for Dispute Resolution on July 12, 2016.

The Landlord testified that the Tenant also did not pay rent for August 2016.

The Landlord testified that he also issued a 1 Month Notice to End Tenancy for Cause as a result of an altercation between the Tenant and his resident manager on June 29, 2016. He testified that the Tenant struck the resident manager with a 2x4 and as a result has been charged with assault.

The Landlord testified that due to the condition the rental unit was left in by the Tenant it has not been rented as of the date of the hearing, September 1, 2016. Accordingly, the Landlord also sought compensation for loss of rent for the month of September.

In total the Landlord sought the following in compensation:

Rent for July 2016	\$766.50
Rent for August 2016	\$766.50
Rent for September 2016	\$766.50
Filing fee	\$100.00
Total compensation sought	\$2,399.50
<i>Less security deposit</i>	<i>\$375.00</i>
Total Monetary Order requested	\$2,024.50

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 attend the hearing to dispute the Notice. As such, she 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. As she vacated the rental unit prior to the hearing, an Order of Possession was not required.

Although the Tenant unilaterally began paying rent in the amount of \$765.50, I find that the monthly rent, pursuant to the Notice of Rent Increase, was \$766.50. I further accept the Landlord's undisputed testimony that the Tenant failed to pay rent for July and August, and that due to the condition of the rental he was not able to rent it for September 2016.

I find that the Landlord has established a total monetary claim of \$2,399.50 comprised of rent owing for July and August 2016 as well as loss of rent for September 2016 and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$375.00 in partial satisfaction of the claim and I grant the Landlord a Monetary Order under section 67 for the balance due of **\$2,024.50**. The LaThis Order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Landlord is at liberty to apply for further monetary ompensation should the rental unit not be re-rented as of October 1, 2016.

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, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the balance due.

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: September 01, 2016

Residential Tenancy Branch