



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

On July 18, 2016, the Landlord submitted an Application for Dispute Resolution for an order of possession; for a monetary order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord attended the teleconference hearing; however, the Tenant did not. The Landlord provided affirmed testimony that he served the Tenant with the Notice of Hearing by sending it using Canada Post Registered Mail on July 25, 2016. The Landlord provided the Registered Mail tracking number as evidence of service. I find that the Tenant has been duly served with the Notice of Hearing in accordance with section 90 of the *Residential Tenancy Act* (the Act).

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

Is the Landlord entitled to an order of possession due to unpaid rent?
Is the Landlord entitled to a monetary order to recover unpaid rent?
Is the Landlord entitled to keep the security deposit towards unpaid rent?
Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on December 1, 2015, as a 1 year fixed term tenancy. Rent in the amount of \$825.00 is payable on or before the first day of each month. The Tenant paid the Landlord a security deposit of \$400.00.

The Landlord testified that the Tenant is frequently late paying the rent and did not pay any rent for the months of July 2016, May 2016, and September 2016.

The Landlord testified that when the Tenant failed to pay July 2016, rent by July 1, 2016, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid

Rent or Utilities dated July 2, 2016, ("the Notice"). The Landlord testified that the Tenant was served with the Notice on July 2, 2016, by posting the Notice to the Tenant's door. The Notice states that the Tenant has failed to pay rent in the amount of \$825.00 which was due on July 1, 2016. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

There is no evidence before me that that the Tenant made an application to dispute the Notice.

The Landlord testified that the Tenant has not paid him any rent since the Notice was issued.

The Landlord testified that the Tenant still owes rent money for the following months:

- July 2016, in the amount of \$825.00
- August 2016, in the amount of \$825.00
- September 2016, in the amount of \$825.00

The Landlord submits that the Tenant owes him \$2,475.00 for unpaid rent and seeks to retain the \$400.00 security deposit in partial satisfaction of his claim for unpaid rent. The Landlord is seeking a monetary order in the amount of \$2,075.00.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant has not paid the outstanding rent within five days of receiving the Notice, 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.

I order that the Landlord can keep the security deposit in the amount of \$400.00 in partial satisfaction of the claim for unpaid rent.

I find that the Tenant owes the Landlord \$2,075.00 for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with his claim, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$2,175.00 comprised of \$2,075.00 in unpaid rent for the above mentioned dates and the \$100.00 fee paid by the Landlord for this hearing. I grant the Landlord a monetary order in the amount of \$2,175.00. This monetary 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 the rent within 5 days of receiving the 10 Day notice and did not file to dispute the Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

I order that the Landlord can keep the security deposit in the amount of \$400.00 in partial satisfaction of the claim.

The Landlord is granted an order of possession effective 2 days after service on the Tenant and I grant a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$2,175.00.

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 08, 2016

Residential Tenancy Branch