



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

On August 5, 2016, the Landlord submitted an Application for Dispute Resolution for an order of possession; a monetary order for unpaid rent; and to recover the cost of the filing fee. The matter was set for a conference call hearing. The Landlord and Tenant attended the hearing. The Landlord and Tenant were provided the opportunity to present their 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 for unpaid rent?

Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began as a fixed term tenancy starting on May 1, 2016, for a one year period to continue thereafter as a month to month tenancy. Rent in the amount of \$2,000.00 per month is payable on the first of each month. The Tenant paid the Landlord a security deposit in the amount of \$1000.00.

The Landlord testified that the Tenant did not pay the rent for June 2016, and July 2016.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 19, 2016, ("the Notice") on July 19, 2016. The Landlord testified that the Tenant was served with the Notice in person by hand. The Notice states that the Tenant has failed to pay rent in the amount of \$4,400.00 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.

The Landlord testified that the Tenant owes rent for June 2016, July 2016, August 2016, and September 2016. The Landlord also testified that the parties entered into an agreement in May 2016, that the Tenant would pay a \$100.00 late penalty fee if the rent

payments were late. The Landlord submits that the tenant was late paying rent five times. The Landlord is requesting a monetary order in the amount of \$8,500.00.

The Tenant testified that she received the 10 Day Notice on July 19, 2016, and she testified that she did not dispute the 10 Day Notice or pay the outstanding rent. The Tenant testified that she owes the Landlord for four months of rent. The Tenant testified that she entered into an agreement with the Landlord to pay a late fee for late rent payments.

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

- June 2016, in the amount of \$2000.00
- July 2016, in the amount of \$2000.00
- August 2016, in the amount of \$2000.00
- September 2016 in the amount of \$2000.00

Analysis

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant did not pay the rent to the Landlord, or dispute the 10 Day Notice within 5 days of receiving it on July 19, 2016. Therefore, the Tenant is 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 find that the Tenant owes the Landlord \$6,000.00 for unpaid rent for June 2016; July 2016; and August 2016. I allow the Landlord's claim to be amended to include \$2,000.00 for rent for September 2016. The Tenant testified that she owes rent for September 2016.

Section 7(d) of the Residential Tenancy Regulation states that a Landlord can charge an administration fee of not more than \$25.00 for late payment of rent. I find that the parties agreed to change the terms of the tenancy to allow for late rent penalty. I grant the Landlord the amount of \$125.00 for the five late rent payments.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord was successful with her application. I order the Tenant to pay the Landlord 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 \$8,225.00 comprised of \$8,000.00 in unpaid rent, \$125.00 for late fees, and the \$100.00 fee paid by the Landlord for this hearing. I grant the Landlord a monetary order in the amount of \$8,225.00. 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 the rent and did not dispute the 10 Day Notice. The Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted a monetary in the amount of \$8,225.00.

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 26, 2016

Residential Tenancy Branch