



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 15 minutes. The landlord's agent (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord testified that the tenant was personally served with the landlord's application for dispute resolution hearing package on September 16, 2016, at the rental unit where the tenant is residing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on September 16, 2016, the day it was served.

At the outset of the hearing the landlord testified that the tenant has not vacated the rental unit and therefore the landlord seeks to have his damage claim dismissed with leave to reapply. I grant the landlord his request and dismiss his claim in relation to damages with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order?

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the testimony of the landlord, the tenancy began approximately five years ago on a month-to-month basis. Rent in the amount of \$400.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$200.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The landlord testified that a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") was personally served to the tenant on August 10, 2016. The notice indicates an effective move-out-date of September 10, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's 1 Month Notice on August 10, 2016, the day it was personally served.

The landlord seeks a monetary order of \$800.00 for unpaid rent from October 2016 to November 2016. The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. As the tenant did not file an application to dispute the notice within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$400.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from October 2016 to November 2016. Therefore, I find that the landlord is entitled to \$800.00 in rent.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$200.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$600.00. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$700.00.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

I dismiss the landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$700.00.

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: November 04, 2016

Residential Tenancy Branch