



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HFBC HOUSING FOUNDATION
and [me suppressed to protect privacy]

DECISION

Dispute Codes MNR, OPR

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") to obtain an order of possession for unpaid rent and a monetary order for unpaid rent. The landlord's Application was commenced by way of direct request proceeding which is an ex parte proceeding. An interim decision was rendered on November 1, 2016 adjourning the matter to a participatory hearing to clarify some of the details of the landlord's Application.

The landlord appeared at the adjourned participatory teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing was considered.

The landlord testified that she sent the tenant a copy of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), along with the interim decision dated November 1, 2016 and the landlord's documentary evidence, by registered mail. The landlord testified that she sent the registered mailing to the rental unit on November 10, 2016. The landlord provided the Tracking Number to confirm the mailing. Taking into account that the online registered mail tracking information supports the undisputed testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Notice and other required documentation as of November 15, 2016, the fifth day after the registered mailing.

Preliminary and Procedural Matters

During the hearing, the landlord withdrew her application for an order of possession for unpaid rent. However, the landlord requested that this decision explain the tenant's obligation to pay rent when due under the tenancy agreement and the law. This decision has been written in part, to inform the tenant of these obligations.

Issue to be Decided

- Is the landlord entitled to a monetary order for unpaid rent pursuant to s.67 of the Act?

Background and Evidence

The landlord testified that the tenant has resided in the rental unit since August 1, 2005 and that this tenancy survived the sale of the building in April 2013. The landlord testified that the tenant entered into a new month to month tenancy agreement on April 15, 2013. The landlord testified that rent in the amount of \$850.00 was due on the first of the month pursuant to the tenancy agreement dated April 15, 2013.

The landlord testified that a Notice of Rent Increase was served on the tenant on September 23, 2016 increasing the rent from \$850.00 to \$874.00 with an effective date of January 1, 2016. The landlord acknowledged that the correct effective date for the rent increase was February 1, 2016 and not January 1, 2016. This correction resulted in the landlord acknowledging that the tenant's rent for January has therefore been paid in full.

The landlord testified that she served the tenant with a 10 Day Notice To End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on October 7, 2016 by registered mail. As the landlord has withdrawn her application for an order of possession, I find I do not need to consider the 10 Day Notice further, except in regard to the rent money still owed to the landlord from the tenant.

The landlord testified that since the 10 Day Notice was served, the tenant made two further payments towards the unpaid rent. On October 24, 2016 the landlord received the sum of \$70.00 from the tenant. On November 19, 2016, the landlord testified that they received a further sum of \$20.00 from the tenant. The landlord's undisputed testimony is that the tenant still owes \$26.00 for unpaid rent since February 1, 2016. The landlord is seeking a monetary order for the amount of \$26.00.

The landlord advised that the tenant continues to occupy the rental unit and has paid the full amount of rent due for the month of November 2016.

The landlord explained that it is her understanding that the tenant refused to pay the full amount of rent after the Notice of Rent Increase took effect on the basis of complaints that the tenant has submitted by letter to the landlord which were included in the landlord's evidence package.

Although the landlord is entitled to recover the cost of the filing fee of \$100.00 from the tenant, the landlord chose not to seek recovery of the cost of the filing fee, saving the tenant the cost of same.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

A tenant must pay rent when due even if they feel the landlord has breached the tenancy agreement or the Act. Section 26 of the *Act* sets out the rule establishing the tenant's obligation to pay rent as follows:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, **whether or not the landlord complies** with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[My emphasis added]

Under the *Act*, a tenant's right to deduct all or a portion of the rent due is limited to the following circumstances:

- i) where the landlord has failed to reimburse the tenant for emergency repairs that were completed by the tenant in accordance with the conditions set out in section 8 of the Regulations;
- ii) to recover an overpayment to a landlord for the amount of a security deposit or pet damage deposit that exceeds $\frac{1}{2}$ of one month's rent payable under the tenancy agreement, in accordance with section 19(2) of the *Act*; or

- iii) where an Arbitrator has made an Order allowing a tenant to deduct all or a portion of the rent due.

Based on the undisputed documentary evidence and testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlords' claim and is reasonable.

Furthermore, although I make no finding regarding the alleged complaints of the tenant, I find there is no evidence before me to support the tenant had a right to withhold rent by deducting a portion of the rent when it is due.

I find that the tenant was required to pay the monthly rent amount of \$874.00 effective February 1, 2016 pursuant to the tenancy agreement and the Notice of Rent Increase. Accordingly, I find that the landlord has established a total monetary claim in the amount of \$26.00 for unpaid rent.

Conclusion

The landlord is entitled to a monetary order in the amount of \$26.00 for rent owed since February 1, 2016. The landlord is granted a monetary order in the amount of \$26.00 which must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 24, 2016

Residential Tenancy Branch

