



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities 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 attend this hearing. The landlord and landlord's advocate (collectively the "landlord") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that on September 28, 2016 she forwarded the landlord's application for dispute resolution hearing package via registered mail to the tenant. The landlord provided a Canada Post receipt and tracking number as proof of service. Based on the 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 application on October 3, 2016, the fifth day after its registered mailing.

Preliminary Issue – Amendment of Landlords' Application

The landlord confirmed that she wished to amend the landlord's application to increase her monetary claim to include October and November 2016 unpaid rent of \$1,700.00 each. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if she did not pay the rent or vacate the rental unit to permit the landlord to re-rent the unit. Based on this undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlords application to include a monetary claim for October and November unpaid rent in the total amount of \$3,400.00.

The landlord also confirmed that she wished to amend the landlord's application to increase her monetary claim to include utilities in an undisclosed amount. The landlord has submitted photographs of two utility bills that are not legible and the landlord has not submitted copies of the latest outstanding utility bills.

In the absence of legible and recent outstanding utility bills, I find the landlord is not entitled to recover utility costs from the tenant. Therefore I will not amend the landlord's application to include a monetary claim for further outstanding utilities or grant a monetary amount for those utility bills submitted as they are illegible. I dismiss this portion of the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

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

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on August 1, 2016 on a fixed term. Rent in the amount of \$1,700.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$850.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

A 10 Day Notice for unpaid rent of \$1,700.00 due on September 1, 2016 was issued to the tenant on September 14, 2016. The notice indicates an effective move-out-date of September 24, 2016.

The landlord seeks a monetary order of \$5,100.00 for unpaid rent from September 2016 to November 2016. The landlord claimed that the tenant has not paid any rent for the above three months.

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 unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or 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 pay the overdue rent or file an application to dispute the notice, 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*, *Residential Tenancy Regulation* (the "*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 \$1,700.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from September 2016 to November 2016. Therefore, I find that the landlord is entitled to \$5,100.00 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 \$850.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$4,250.00. 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 \$4,350.00.

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 utilities with leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$4,350.00 against the tenant.

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 21, 2016

Residential Tenancy Branch