



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent 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 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, pursuant to section 72 .

The tenant did not attend this hearing, which lasted approximately 17 minutes. 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 testified that the tenant was served with the landlord's application for dispute resolution hearing package on October 26, 2016, by way of registered mail and by posting to the rental unit door. The landlord provided a Canada Post receipt and tracking number with her application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on October 31, 2016, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, undated ("10 Day Notice"), on October 17, 2016, by way of posting to the rental unit door. The landlord provided a signed, witness proof of service with her application but it indicates that the person who posted the notice, witnessed herself post it. The landlord clarified that she witnessed the person who signed the witness statement, post the notice on the door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on October 20, 2016, three days after its posting.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

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

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on December 15, 2015. Monthly rent in the amount of \$800.00 is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. No written tenancy agreement was signed, only a verbal agreement was reached.

The landlord issued the 10 Day Notice, indicating that rent of \$7,200.00 was unpaid. The landlord seeks a monetary order of \$8,800.00 for 11 months of rent at \$800.00 for each month from February to December 2016, as well as the \$100.00 filing fee.

Analysis

I find that the landlord's 10 Day Notice does not comply with section 52 of the *Act*. The notice is not dated by the landlord. The notice does not indicate an effective move-out date. The notice does not indicate when the rent of \$7,200.00 was due. The notice does not indicate who issued it, as there is no name under the "landlord" section. The landlord did not have an explanation for any of these deficiencies except to say that this was her first time at a hearing. Accordingly, the landlord's application for an order of possession based on this 10 Day Notice is dismissed without leave to reapply. This tenancy continues until it is ended in accordance with the *Act*.

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. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$8,800.00 total from February to December 2016. Therefore, I find that the landlord is entitled to \$8,800.00 in rental arrears for the above period.

As the landlord was only partially successful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the tenant.

As this tenancy is continuing, I find that the landlord is not entitled to retain the tenant's security deposit of \$400.00 to offset the monetary order for unpaid rent. This application is dismissed with leave to reapply.

Conclusion

The landlord's application for an order of possession for unpaid rent based on the undated 10 Day Notice for \$7,200.00 issued on October 17, 2016, is dismissed without leave to reapply. This tenancy continues until it is ended in accordance with the *Act*.

I issue a monetary order in the landlord's favour in the amount of \$8,800.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application to retain the tenant's security deposit is dismissed with leave to reapply.

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

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: December 19, 2016

Residential Tenancy Branch