



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, ET, FF; CNR, MNDC, MNR, OLC, RP, RR, 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 pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- an early end to this tenancy and an order of possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement pursuant to section 67;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend the hearing; the tenant's neighbour attended the hearing. 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 on January 12, 2017 he 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 January 17, 2017, the fifth day after it's registered mailing.

Preliminary Issue – Adjournment Request

At the outset of the hearing, an individual identifying herself as the tenant's neighbour stated that the tenant would not be participating in the teleconference hearing as he was working out of town. The tenant's neighbour confirmed she was not an agent authorized to speak on the tenant's behalf she reiterated she only attended the hearing at the tenant's request to request an adjournment. The landlord did not consent to the adjournment.

Residential Tenancy Branch, Rules of Procedure, rule 7.9 sets out the criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- (a) the oral or written submissions of the parties;
- (b) the likelihood of the adjournment resulting in a resolution;
- (c) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment;
- (d) whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- (e) the possible prejudice to each party

I informed the tenant's neighbour at the hearing that I would not adjourn the hearing. Although I considered all the criteria in 7.9, I declined to adjourn the hearing as the tenant had ample opportunity to arrange for an agent to represent him, and it would unfairly prejudice the landlord to reschedule the hearing. As instructed, the tenant's neighbour exited the teleconference.

Because the tenant did not participate in the conference call hearing to present his claim the tenant's entire application is dismissed without leave to reapply.

The hearing resumed on the basis of the landlord's application only. The landlord clarified that he applied for an early end to this tenancy and an order of possession in error; he only seeks an order of possession for unpaid rent, a monetary order for unpaid rent and to recover the filing fee.

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 recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this tenancy began in late 2014 on a month to month basis. Rent in the amount of \$1,575.00 is payable on the first of each month. The tenant remitted \$787.50 for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

The landlord testified that the tenant was served with two 10 Day Notices both dated January 4, 2017, on the same date, by way of posting to the rental unit door where the tenant is residing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with both 10 Day Notices on January 7, 2017, three days after their posting.

The first 10 Day Notice was issued for non-payment of December rent and the second was issued for non-payment of January rent. The landlord seeks a monetary order of \$3,150.00 for unpaid rent from December 2016 to January 2017. The landlord claimed that the tenant has not paid any rent since the two 10 Day Notices were issued.

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.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the two notices before me, I find that the tenant was served with two effective notices. As the tenant's application has been dismissed 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 \$1,575.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from December 2016 to January 2017. Therefore, I find that the landlord is entitled to \$3,150.00 in rent.

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 \$3,250.00.

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 \$787.50 in partial satisfaction of the monetary award and I grant an order for the balance due \$2,462.50.

Conclusion

I dismiss the tenant's entire application without leave to reapply.

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

I issue a monetary order in the landlord's favour in the amount of \$2,462.50 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: January 30, 2017

Residential Tenancy Branch