



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF; CNR

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 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.

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;

The landlord's two agents (collectively "the landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed receipt of the landlord's application for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

Preliminary Issue –Service of Tenant's Application

Pursuant to Rule 3.1 of the Residential Tenancy Branch Rules of Procedure, an applicant must serve the respondent with a copy of the application. At the outset of the hearing, the tenant testified that he did not serve his application to the landlord and the landlord confirmed he did not receive a copy. In the absence of service I find I cannot hear the tenant's application and therefore dismiss it.

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, money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to a monetary order to keep all or part of the security deposit?

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

Background and Evidence

The parties provided conflicting testimony as to when the tenancy began, however based on the submitted tenancy agreement, the tenancy began on September 1, 2014 on a fixed term until February 28, 2015 after which time it continued on a month-to-month basis. Rent in the amount of \$1,000.00 is payable on the first of each month. A security deposit in the amount of \$500.00 was remitted at the start of tenancy. The landlord maintains possession of the deposit. The tenant continues to reside in the rental unit.

The tenant confirms receipt of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") dated January 14, 2017 by way of posting to his rental unit door where he is residing. The notice indicates an effective move-out-date of January 27, 2017.

The landlord seeks a monetary order of \$4,500.00 for June 2016, November 2016, December 2016, January 2017 and February 2017 rent. The landlord claimed that the tenant paid a total of \$500.00 in rent for the above five months.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

In reply, the tenant testified that he owes \$3,500.00 in rent for the months indicated by the landlord with the exception of June 2016. It is the tenant's position that he paid the landlord June 2016 rent by way of e-transfer.

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 and his application has been dismissed, 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 \$1,000.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent for November 2016, December 2016, January 2017 and February 2017 rent. In relation to the tenant's position that June rent was paid by way of e-transfer, I find the tenant has provided insufficient evidence to substantiate this claim and therefore find the landlord is entitled to the recovery of June 2016 rent. In total, I find that the landlord is entitled to \$4,500.00 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 \$500.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$4,000.00. 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 \$4,100.00.

Conclusion

The tenant's application is dismissed in its entirety.

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 \$4,100.00 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: February 22, 2017

Residential Tenancy Branch