



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, FF (Landlord's Application)
CNR (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on February 6, 2017 and by the Landlord on February 15, 2017.

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent, to keep the Tenant's security deposit, and to recover the filing fee from the Tenant. The Tenant applied to cancel the notice to end tenancy for unpaid rent and utilities.

The Landlord appeared for the hearing and provided affirmed testimony and documentary evidence prior to the hearing. There was no appearance by the Tenant despite the Tenant's Application being scheduled to be heard at the same time as the Landlord's Application in this hearing. As there was no appearance by the Tenant for the 30 minute hearing, I dismissed the Tenant's Application without leave to re-apply.

I then turned my mind to the service of the Landlord's Application to the Tenant. The Landlord testified that he served a copy of his Application and the Hearing Package to the Tenant by registered mail on February 16, 2017. The Landlord provided the Canada Post tracking number into oral evidence which is recorded on the front page of this Decision.

Section 90(c) of the Act states that a party served a document by mail is deemed to have received it five days later. Based on the undisputed oral evidence before me, I find the Tenant was deemed served the documents for this hearing on February 21, 2017 pursuant to the Act.

The Landlord also confirmed at the start of the hearing that he did not require the Order of Possession because the Tenant had abandoned the rental unit. Therefore, this portion of the Landlord's Application was dismissed. During the hearing, the Landlord withdrew his monetary claim for unpaid rent because he had not provided complete evidence for this portion of the claim. As the Tenant failed

to appear for the hearing, I provided the Landlord leave to re-apply for this portion of the Application.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenant's security and pet damage deposit in partial satisfaction of their monetary claim?

Background and Evidence

The Landlord testified that this tenancy started on September 1, 2014 for a fixed term of one year after which the tenancy continued on a month to month basis thereafter. A tenancy agreement was signed which required the Tenant to pay rent of \$1,100.00 on the first day of each month. The Tenant paid a security deposit of \$500.00 at the start of the tenancy which the Landlord still retains in trust.

The Landlord testified that the Tenant failed to pay rent for February 2017. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") by posting it to the Tenant's door on February 4, 2017. The 10 Day Notice was provided into evidence and shows a vacancy date of February 14, 2017 due to \$1,100.00 in unpaid rent.

The Landlord testified that the Tenant abandoned the rental unit at some point after being served with the 10 Day Notice and the Landlord became aware of this when he provided notice of entry which he affected on February 22, 2017. The Landlord now seeks unpaid rent for January 2017 and loss of rent for February 2017 as he was unable to re-rent the rental unit for February 2017 for a total of \$2,200.00.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act, unless the tenant has right under the Act to withhold it or deduct from it. In this case, I accept the Landlord's oral and documentary evidence that the Tenant failed to pay rent for January 2017 which I award to the Landlord.

Policy Guideline 3 to the Act on claims for unpaid and loss of rent states that:

"In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next

month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.”

[Reproduced as written]

Based on the foregoing, I find the Landlord is eligible to loss of rent the Landlord suffered from having to end the tenancy for nonpayment of rent. Accordingly, the Landlord is awarded rent in the amount of \$2,200.00 claimed. As the Landlord has been successful in proving unpaid rent, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$2,300.00.

As the Landlord already holds the Tenant's \$500.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. The Landlord is issued with a Monetary Order for the outstanding balance of \$1,800.00. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of the above orders are attached to the Landlord's copy of this Decision.

Conclusion

The Tenant has breached the Act by not paying rent. Therefore, the Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the outstanding balance of rent and the filing fee in the amount of \$1,800.00. The Tenant's Application is dismissed without leave to re-apply as she failed to appear for the hearing. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 08, 2017

Residential Tenancy Branch