



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* (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, 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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord provided undisputed affirmed evidence that the tenant was served with the notice of hearing package and the submitted documentary evidence in person on February 22, 2017. I accept the undisputed affirmed testimony of the landlord and find that both parties have been sufficiently served as per section 90 of the Act.

During the hearing it was clarified by the landlord that no security deposit has been paid and as such the landlord's application to retain the security deposit is dismissed.

At the end of the hearing the landlord became abusive with foul language and was belligerent in his comments. The landlord was cautioned to stop or that the hearing would be cut short. The landlord continued with his foul language and a second caution was given to the landlord. The landlord continued being abusive and the conference call hearing was terminated. The remaining portion of the hearing was related to any questions the landlord may have regarding the hearing process. As such, the hearing is deemed completed.

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, for money owed or compensation for damage or loss and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided undisputed affirmed testimony that this tenancy began on October 1, 2016 on a month-to-month tenancy in which the monthly rent is \$800.00 payable on the 25th day of each month. No security deposit was paid.

The landlord provided undisputed affirmed testimony that the tenant was served with the 10 Day Notice dated February 8, 2017 by posting it to the rental unit door on February 8, 2017. The 10 Day Notice sets out that the tenant failed to pay:

Damage Deposit	\$400.00
Rent, October 2016	\$300.00
Rent, 4 months	\$200.00

The landlord clarified in his direct testimony that the tenant failed to pay rent of \$500.00 which consists of:

Unpaid Rent, October 2016	\$200.00
Unpaid Rent, November 2016	\$50.00
Unpaid Rent, December 2016	\$50.00
Unpaid Rent, January 2017	\$50.00
Unpaid Rent, February 2017	\$50.00
Unpaid Rent, March 2017	\$800.00

The landlord was not able to provide any clarification on how the total owed of \$1,200.00 related to the monetary claim filed of \$1,700.00 or in relation to the \$500.00 indicated on the original 10 Day Notice dated February 8, 2017.

The landlord was also unable clarify why the 10 Day Notice was not properly completed to show how much rent was due and when it was payable.

The landlord clarified that the part of the 10 Day Notice regarding utilities was not to end the tenancy for unpaid utilities, but was for ending the tenancy for failing to transfer the utilities account into the tenant's name.

Analysis

I accept the landlord's direct testimony that the 10 Day Notice was served to the tenant by posting it to the rental unit door on February 8, 2017 which the act deems that the tenant was

served in this manner on February 11, 2017, 3 days later. As such, the effective end of tenancy is corrected to February 21, 2017 instead of February 17, 2017 as stated on the 10 Day Notice.

Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent “by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.” Subsection 46(2) of the *Act* requires that “a notice under this section must comply with section 52.

Section 52 of the *Act* reads in part as follows:

- 52 In order to be effective, a notice to end tenancy must be in writing and must...
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45(1) or (2) [tenant’s notice], state the grounds for ending the tenancy, and
 - (e) when given by a landlord, be in the approved form.

I find that the landlord has failed to accurately reflect the grounds for the 10 Day Notice by stating what rent was owed and when it was due. Since the landlord has failed to clarify the grounds for the notice, the landlords have not complied with the statutory requirement established under section 52(d) of the *Act*, I find that the landlords’ 10 Day Notice is of no effect. I also note that the landlord has failed to clarify the amount sought for monetary compensation for unpaid rent. The landlord applied for a monetary claim of \$1,700.00, yet provided details only for \$1,200.00. For these reasons, I dismiss the landlord’s application and set aside the landlords’ 10 Day Notice dated February 8, 2017.

Conclusion

The landlord’s application is dismissed and the 10 Day Notice dated February 8, 2017 is set aside.

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: March 16, 2017

Residential Tenancy Branch

