



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

On January 27, 2017, the Landlord submitted an Application for Dispute Resolution for an order of possession; for a monetary order for unpaid rent or utilities; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord attended the teleconference hearing; however, the Tenant did not. The Landlord provided affirmed testimony that the property manager B. G. served the Tenant with the Notice of Hearing in person by hand on May 3, 2016. I find that the Tenant has been duly served in accordance with the Act.

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

The Tenant called into the hearing 15 minutes late. The Tenant stated she was having difficulty connecting to the teleconference hearing. The Tenant was provided a summary of the Landlord's affirmed testimony that was received prior to the Tenants appearance.

The Landlord asked to amend his application to include being permitted to keep the security deposit in partial satisfaction of the unpaid rent. The tenant did not oppose the Landlords request to keep the security deposit. The Landlords' request id granted and the Application is amended to include that the Landlord is applying to keep the security deposit.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to keep the security deposit in partial satisfaction of unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties agree that the tenancy began on June 1, 2015, as a month to month tenancy. Rent in the amount of \$770.00 is payable on the first day of each month. The Tenant paid the Landlord a security deposit of \$375.00.

The Landlord testified that the Tenant did not pay all the rent owing under the tenancy agreement for the month of January 2017. The Landlord only received \$380.00 towards January 2017, rent. The Landlord testified that the Tenant still owes \$390.00 for January 2017, rent.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 6, 2017, ("the Notice") on January 6, 2017. The Landlord testified that the Tenant was served with the Notice in person.

The Notice states that the Tenant has failed to pay rent in the amount of \$390.00 which was due on January 1, 2017. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant testified that she did not pay the full rent owing under the tenancy agreement for January 2017. The Tenant testified that she believes the Landlord was over paid back in 2015. The Tenant submitted that an ex roommate gave the Landlord cheques in 2015, and the Landlord cashed the cheques even though the roommate had moved out.

The Tenant also testified that the Landlord has failed to paint the rental unit so the Tenant withheld paying the rent.

The Tenant testified that she did not dispute the 10 Day Notice she received because she believed she could work out a solution with the Landlord.

In response, the Landlord testified that he did not receive any extra rent payments back in 2015. The Landlord testified that the rent cheques were returned to the Tenants ex-roommate.

The Landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$390.00.

Analysis

Section 26 of the Act states:

a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy

agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the evidence before me, the testimony of the Landlord, and Tenant and on a balance of probabilities, I find that the Tenant has not paid the outstanding rent within five days of receiving the Notice, and did not apply to dispute the Notice, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Pursuant to section 26 of the Act, I find that the Tenant did not have a right to withhold payment of the rent.

There is insufficient evidence from the Tenant to establish that there was an over payment of rent in 2015.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenant owes the Landlord \$390.00 for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I order that the Landlord can keep the \$375.00 security deposit in partial satisfaction of the claim for unpaid rent.

I find that the Landlord has established a total monetary claim of \$490.00 comprised of \$390.00 in unpaid rent for January 2017, and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$375.00 towards the claim of \$490.00, I find that the Landlord is entitled to a monetary order in the amount of \$115.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant failed to pay the rent and did not file to dispute the Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

I order that the Landlord can keep the security deposit in the amount of \$375.00 in partial satisfaction of the claim.

The Landlord is granted an order of possession effective 2 days after service on the Tenant and I grant the Landlord a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$115.00.

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 01, 2017

Residential Tenancy Branch