



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on March 20, 2017 for an Order of Possession and a Monetary Order for unpaid rent, and to recover the filing fee from the Tenant.

An agent for the Landlord appeared for the hearing and provided affirmed testimony and documentary evidence prior to the hearing. However, there was no appearance for the Tenant during the eight minute hearing or any submission of evidence prior to this hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord's agent testified that he served the Tenant with a copy of the Application, the Hearing Package, and the documentary evidence to the rental unit address on March 24, 2017 by registered mail. The Landlord provided a copy of the Canada Post tracking receipts as evidence to verify this method of service. The Landlord's agent confirmed the documents sent by registered mail were returned as unclaimed.

Section 90(a) of the *Residential Tenancy Act* (the "Act") provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenant was deemed served with the required documents on March 29, 2017 pursuant to the Act.

The hearing continued to hear the undisputed evidence of the Landlord. The Landlord's agent explained that the Tenant had vacated the rental unit on April 9, 2017. Therefore, he withdrew the Application for an Order of Possession. The Landlord's agent also requested that the Landlord be allowed to keep the Tenant's security deposit in partial satisfaction of the claim for unpaid rent. Pursuant to my authority under Section 64(3) (c) of the Act, I amended the Landlord's Application to include this request.

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 deposit?

Background and Evidence

The Landlord's agent testified that this tenancy started on July 15, 2015 for fixed term of one year after which time it continued on a month to month basis thereafter. Rent of \$1,700.00 was payable on the first day of each month. The Tenant paid a security deposit of \$850.00 at the start of the tenancy which the Landlord still retains in trust.

The Landlord's agent testified the Tenant has failed to pay full rent from 2017 onwards. The Landlord's agent testified that by March 1, 2017 the Tenant owed a total of \$4,300.00 in rental arrears.

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"). This was posted to the Tenant's door on March 9, 2017 with a witness. The 10 Day Notice was provided into evidence with an unpaid rent amount of \$4,300.00 due on March 1, 2017.

The Landlord's agent testified that the Tenant signed a mutual agreement to end the tenancy but failed to pay rent for April 2017. Therefore, the Landlord now seeks to claim \$6,000.00 in rental arrears from the Tenant.

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. I accept the undisputed oral and documentary evidence before me that the Tenant is in rental arrears for this tenancy in the amount of \$6,000.00 which I hereby grant to the Landlord.

As the Landlord has been successful obtaining the relief claimed, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is \$6,100.00.

As the Landlord already holds the Tenant's \$850.00 security deposit, I grant the Landlord's request to keep this amount pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the outstanding balance of \$5,250.00. This order must be served on the Tenant and may then be filed in the Small

Claims Court and enforced as an order of that court. Copies of the order are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by the Landlord.

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 remaining balance of \$5,250.00. The Landlord withdrew the Application for an Order of Possession as the Tenant has vacated the rental unit.

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: April 26, 2017

Residential Tenancy Branch