



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

This hearing also addressed the tenants' 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 and tenants 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 tenants confirmed receipt of the landlord's application for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's application.

Preliminary Issue – Service of Tenants Application

At the outset of the hearing, the tenants testified that they did not serve the tenants application for dispute resolution to the landlord. .

As per section 59 of the *Act*, a party that files an application for dispute resolution with the Branch must serve the other party within three days of making the application. Based on the tenants own testimony and in accordance with section 59, I dismiss the tenants application.

Preliminary Issue – Amendment of Landlord's Application

The landlord confirmed that he wished to amend the landlord's application to increase his monetary claim to include May unpaid rent of \$1,000.00 total. I find that the tenants should reasonably have known that the landlord would suffer this loss of income if they did not pay the rent or vacate the rental unit to allow it to be re-rented. Based on the undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlord's application to include a monetary claim for May 2017 unpaid rent of \$1,000.00 total.

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?

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

Background and Evidence

As per the testimony of the parties, the tenancy began on October 1, 2015 on a month-to-month basis. Rent in the amount of \$1,000.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$500.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

A 10 Day Notice for unpaid rent of \$1,000.00 was issued to the tenants on April 4, 2017. The notice indicates an effective move-out-date of April 17, 2017.

The landlord seeks a monetary order of \$2,000.00 for unpaid rent from April 2017 to May 2017. The landlord claimed that the tenants have not paid any rent for the above two months. The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenants.

The tenants confirmed they have not paid April and May rent.

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 tenants were served with an effective notice. As the tenants did not pay the overdue rent and their application has been dismissed, the tenants are 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*, *Residential Tenancy Regulation* (the "*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 tenants failed to pay full rent from April 2017 to May 2017. Therefore, I find that the landlord is entitled to \$2,000.00 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 \$1,500.00. 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 \$1,600.00.

Conclusion

The tenants' application is dismissed in its entirety.

I grant an order of possession to the landlord effective **two (2) days after service on the tenants**.

I issue a monetary order in the landlord's favour in the amount of \$1,600.00 against the tenants.

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: May 17, 2017

Residential Tenancy Branch