



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR OPR

Introduction

This participatory hearing was convened after the issuance of April 26, 2017 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord's application for the following to a participatory hearing:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities; and
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent.

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter.

The landlord, A.A. attended the hearing, while the tenant did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was posted on the tenant's door on April 5, 2017. Pursuant to sections 88 and 90 of the *Act*, I find that the tenant was served with this 10 Day Notice on April 8, 2017.

During the Direct Request proceedings, it was determined that the Monetary Order Worksheet submitted by the landlord indicates that the tenant has paid an amount equal to the rent that was listed on the 10 Day Notice on April 7, 2017 within the five day days allowed by the *Act*. The landlord confirmed this during the hearing.

On May 5, 2017, the tenant was handed the landlord's application for dispute resolution. Pursuant to sections 88 and 90 of the *Act*, the tenant was served on May 5, 2017 with the Notice of Hearing.

At the outset of the hearing the landlord explained that the payment received on April 7, 2017 was applied to February rent, however the landlord did not include the rent for February 2017 on the 10 Day Notice issued to the tenant.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Can the landlord collect a Monetary Order?

Background and Evidence

The tenancy in question was a fixed-term tenancy that began on January 1, 2016 and was set to end on May 31, 2017. This was a month to month tenancy; rent was set at \$1,420.00 per month. A security deposit of \$565.00 continues to be held by the landlord.

The landlord gave testimony that her application for Direct Request was reconvened to a participatory hearing because the Adjudicator found that, "the Monetary Order Worksheet submitted by the landlord indicates that the tenant has paid an amount equal to the rent that was listed on the 10 Day Notice on April 7, 2017 within the five day days allowed by the *Act*."

The landlord explained that this was accurate, that the tenant had in fact paid the rent within the allowable 5 day period; however, the landlord testified that the tenant was outstanding in rent for February and March 2017 and the rent paid on April 7, 2017 was applied to cover these other, past debts.

The landlord has applied for an Order of Possession based on a 10 Day Notice to End Tenancy for unpaid rent for the month of April 2017, along with a Monetary Order of \$2,840.00 in satisfaction for unpaid rent in March and April 2017.

Analysis

The tenant succeeded in paying the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has taken all adequate steps to cancel this 10 Day Notice issued on April 5, 2017 for the unpaid rent indicated on it. The landlord is seeking to enforce an Order for which she has not applied, that being unpaid rent for February and March 2017.

Section 46 of the *Act* states that "A landlord may end a tenancy if rent is unpaid on any day after the day it is due, 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... Within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect."

By the landlord's own admission, the tenant has paid the rent within 5 days of receiving a notice to end tenancy for non-payment of rent for April 2017. Since the tenant has taken all appropriate steps to cancel this notice, the 10 Day Notice issued on April 5, 2017 is of no force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

Monetary Order

The tenant has paid all outstanding funds owing as listed on the 10 Day Notice served on May 5, 2017. The landlord's application for Dispute Resolution by Direct Request included an application for a Monetary Order of \$2,840.00 for unpaid rent for the month of March and April 2017. This is confusing and is different than the amount sought on the 10 Day Notice. The

evidence indicates that the tenant was not aware of this amount and was only served with a 10 Day Notice issued on April 5, 2017 for unpaid rent of \$1,420.00 due on April 1, 2017. The landlord acknowledged that the tenant has paid this amount. As the tenant has paid the amount indicated on the 10 Day Notice, the landlord's application is dismissed.

Conclusion

The landlord's application for an Order of Possession is dismissed.

The landlord's application for a Monetary Order is dismissed.

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: June 5, 2017

Residential Tenancy Branch