



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR OPC OPQ MND 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 and utilities pursuant to section 55;
- an order of possession for cause pursuant to section 55;
- an order of possession because tenant ceases to qualify for rental unit pursuant to section 49.1
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:20 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord testified that on May 17, 2017, she personally served the tenant with a copy of the Application for Dispute Resolution and Notice of Hearing.

Based on the above evidence, I am satisfied that the tenant was personally served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to section 89 of the Act. The hearing proceeded in the absence of the tenant.

Preliminary Issue – Clarification of Landlord's Application

The landlord had applied for an order of possession based upon a 10 Day Notice for unpaid rent, a 1 Month Notice for Cause and a 2 Month Notice because the tenant ceases to qualify for a subsidized unit. Only a 10 Day Notice was provided on file. The

landlord clarified in the hearing that neither a 1 Month Notice nor a 2 Month Notice has been served on the tenant. The landlord was also seeking an order of possession based upon a mutual agreement to end tenancy. However, the landlord testified and confirmed that the tenant did not sign the mutual agreement. The landlord also clarified that the monetary application was not for damages to the rental unit but rather for unpaid rent and security deposit.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

Is the landlord entitled to a monetary award for unpaid rent and unpaid security deposit?

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

Background and Evidence

The tenancy began on February 1, 2017 with a monthly rent of \$750.00 payable on the 1st day of each month.

The landlord testified that on March 05, 2017 she personally served the tenant with the 10 Day Notice.

The landlord testified that the 10 Day Notice was served as the tenant had failed to pay rent for March 2017 plus \$50.00 was outstanding for the first month's rent plus the \$375.00 security deposit required by the tenancy agreement had not been paid. The landlord testified the tenant did not pay the outstanding amount of rent and security deposit as indicated in the 10 Day Notice within five days of service of the Notice. However, the landlord testified that she has received rent in full for the months of April, May and June 2017. Rent was paid by cheque and no receipts were issued to the tenant for use and occupancy only.

Analysis

I am satisfied that the tenant was personally served with the 10 Day Notice on March 5, 2017, pursuant to section 88 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant

does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, March 15, 2017. However, in this case, I find the landlord has reinstated the tenancy by continuing to collect rent for the months of April, May and June 2017. The landlord did not issue any receipts to the tenant for these rent payments as “use and occupancy” only and the landlord did not make an application until May 12, 2017 which more than 2 months after the 10 Day Notice was served.

Further, it was evident from the application and the landlord’s testimony that the landlord was requesting an order of possession based upon excessive noise and disturbance. It was explained to the landlord that she is first required to serve the tenant with a 1 Month Notice for Cause. In the alternative, the landlord could serve the tenant with a new 10 Day Notice based upon unpaid rent from March 2017 plus the \$50.00 from the first month’s rent. The landlord could then file a new application based upon the 10 Day Notice if the tenant does not pay or make an application to dispute the 10 Day Notice within 5 days of being served.

The 10 Day Notice dated March 5, 2017 is cancelled and the landlord’s application for an order of possession is dismissed.

Section 26 of the Act requires that 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.

I accept the landlord’s uncontested evidence and claim for outstanding rent of \$800.00. This included unpaid rent of \$750.00 for March 2017 and \$50.00 unpaid rent for February 2017. As this tenancy is continuing and the agreement required a security deposit of \$375.00, I accept the landlords claim for the unpaid security deposit.

As the landlord was successful in part of this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$1275.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1275.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 26, 2017

Residential Tenancy Branch