



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

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;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail on June 30, 2017. Both parties also confirmed that the landlord served the tenant with the submitted documentary evidence in person on June 30, 2017. The tenant confirmed that no documentary evidence was provided by him. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

At the outset it was confirmed by the landlord that no digital evidence was provided. The landlord clarified that the provided list was of physical photographs.

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 and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 5, 2017 on a fixed term tenancy until November 5, 2017 as shown by the submitted copy of the signed tenancy agreement dated April 5, 2017. The monthly rent is \$2,200.00 payable on the 1st day of each month. A security deposit of \$1,100.00 was paid on April 4, 2017.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$8,433.00 based upon the monetary worksheet which consists of:

\$2,933.00	Unpaid Rent, April 2017 and down payment
\$2,933.00	Unpaid Rent, April 2017 and down payment
\$2,200.00	Unpaid Rent, May 2017
\$2,200.00	Unpaid Rent, June 2017
\$2,200.00	Unpaid Rent, July 2017

Both parties confirmed that the landlord served the tenant with a 10 Day Notice dated May 16, 2017 which states in part that the tenant failed to pay rent of \$1,933.00 that was due on April 7, 2017. The landlord clarified that the stated amount was not just for rent, but included the non-payment of a security deposit. The landlord detailed this as pro-rated rent of \$833.00 and the \$1,100.00 security deposit. It was clarified with both parties that the 10 Day Notice for Unpaid Rent/Utilities can only be used to end a tenancy for Unpaid Rent or Utilities as stated. As such, this 10 Day Notice was set aside.

The landlord provided affirmed testimony that a second 10 Day Notice for Unpaid Rent dated May 16, 2017 was served to the tenant. This notice states in part that the tenant failed to pay rent of \$2,200.00 that was due on May 1, 2017 and provides for an effective end of tenancy date of May 26, 2017. The landlord stated that this 10 Day Notice was served in person to the tenant on May 16, 2017 with the first 10 Day Notice. The tenant disputes that he was only served one 10 Day Notice. The landlord stated that she had a witness in the form of a police officer attend to confirm service and has provided a business card. The tenant also stated that she had a witness (the police

officer), but was unable to contact the witness. The landlord stated that the witness was unavailable.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, the landlord has claimed that the tenant was served with the 10 Day Notice. The tenant has disputed receiving it. The landlord is unable to provide sufficient evidence to support her claim. As such, on the basis of the evidence provided by both parties, I find that the landlord has failed to provide sufficient evidence of service on the second 10 Day Notice dated May 16, 2017 pursuant to section 88 of the Act. The merits of the 10 Day Notice were not considered.

The landlord's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

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: July 28, 2017

Residential Tenancy Branch