



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNSD

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;
- 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.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenant was served 3 times with the notice of hearing package, the first on July 6, 2017 by posting it to the rental unit door; the second by placing it in the tenant's mail box on July 6, 2017; and third in person just two weeks prior to the scheduled hearing date. The tenant disputes the landlord's claims stating that he only received the package two weeks prior to the scheduled hearing date in person. The landlord also claims that the submitted documentary evidence was posted to the rental unit door on July 6, 2017. The landlord stated that he had proof of service, but did not provide it for the hearing. The tenant did not submit any documentary evidence nor raise any issue of service. I accept the affirmed testimony of both parties and find that as the tenant has attended and has not raised any service issue(s) with the notice of hearing package that the tenant has been sufficiently served as per section 90 of the Act. As for the landlord's submitted documentary evidence, I find as the tenant has disputed receiving the package and the landlord is unable to provide sufficient evidence of service that this package shall be excluded from consideration in this hearing.

At the outset the landlord stated that he was not seeking a monetary claim and was cancelling his request to retain the security deposit. As such, no further action is required for this portion of the application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

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.

Both parties agreed that monthly rent is \$375.00 payable on the 1st day of each month. A security deposit of \$187.50 was paid.

The landlord provided affirmed testimony that the tenant was served with a 10 Day Notice dated June 6, 2017 by posting it to the rental unit door on June 6, 2017 which states in part that the tenant failed to pay rent of \$375.00 that was due on June 1, 2017. The 10 Day Notice sets out an effective end of tenancy date of June 19, 2017. The tenant confirmed receiving the 10 Day Notice as claimed by the landlord. The tenant provided affirmed testimony that he did not pay all of the rent owed within the allowed 5 days nor did he file an application disputing the notice.

The landlord seeks an order of possession for unpaid rent of \$550.00.

The landlord claims that the tenant failed to pay rent when it was due and has provided a chronological schedule of events which are:

June 2017 Rent Owed	\$375.00
June 15 Partial Rent Payment	-\$100.00
June 23 Partial Rent Payment	-\$100.00
July 2017 Rent Owed	\$375.00
Total Arrears as of July 1, 2017	\$550.00

Both parties agreed to the above noted schedule, but the tenant also claims that just a few days prior to the scheduled hearing date, the rent has been paid in full except for August 2017 rent.

The tenant stated that he thought as he had paid all of his rental arrears that the landlord was no longer seeking an end to the tenancy.

The landlord's response was that he did accept rent paid after it was due and past the effective date of the end of tenancy as per the 10 Day Notice. The landlord provided affirmed testimony that the tenant was not given any notice that the landlord was still seeking an end to the tenancy. The landlord also provided affirmed testimony that he did issue a receipt to the tenant for the payment of rent for "use and occupancy", but has failed to provide any evidence to support this claim.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the affirmed testimony of both parties that the 10 Day Notice was served to the tenant on June 6, 2017 by posting it to the rental unit door.

I find, on a balance of probabilities, the tenant did not pay or attempt to pay his rent when it was due or within the five days or file an application to dispute it as provided for pursuant to section 46.

However, both parties confirmed that partial rent was paid late on June 15, 23 and then subsequently in full a couple of days prior to the schedule hearing date. I note that this is well beyond the effective end of tenancy date of the 10 Day Notice. The landlord provided conflicting and contradictory testimony that the tenant was provided notice that he was accepting rent for “use and occupancy only” and was not reinstating the tenancy. The tenant has disputed this claim of notice. As such I find that the landlord’s affirmed testimony on this matter to be unreliable without any supporting evidence. I find that the landlord failed to provide notice to the tenancy that payment of rent was being accepted only for use and occupancy only and has reinstated the tenancy. The 10 Day Notice dated June 6, 2017 is set aside. The tenancy shall continue.

Conclusion

The landlord’s application is dismissed. The 10 Day Notice dated June 6, 2017 is set aside. The tenancy shall continue.

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: August 02, 2017

Residential Tenancy Branch