



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNSD OPN OPR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities;
- an application to keep all or part of the damage deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenant, pursuant to section 72 of the *Act*.

While the landlord, K.M., attended the hearing by way of conference call, 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 undisputed sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was handed to the tenant on June 2, 2017. I find that in accordance with sections 88 and 90 of the *Act* the 10 Day Notice was deemed to have been served on the tenant on the same day of service, June 2, 2017.

The landlord provided undisputed testimony that the tenant was personally handed a copy of the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package") in person on June 18, 2017. In accordance with sections 89 and 90 of the *Act*, I find the tenant deemed to be served with the landlord's dispute resolution hearing package on June 24, 2017.

Following opening remarks, the landlord stated that she no longer required an Order of Possession because the tenant had vacated the rental unit at the end of June 2017.

Issue(s) to be Decided

Can the landlord retain the security deposit from the tenant?
Can the landlord recover the filing fee from the tenant?

Background and Evidence

Undisputed testimony was provided to the hearing by the landlord noting that this tenancy began, “about four years ago in approximately February 2013.” She explained that rent was \$1,100.00 per month and a security deposit of \$550.00 collected at the outset of the tenancy continues to be held by the landlord.

The landlord explained that she served the tenant with a 10 Day Notice to End Tenancy for unpaid rent in person on June 2, 2017. On or around June 28, 2017 the tenant vacated the rental unit. The landlord said she was unsure of the exact date because the tenant stopped responding to her text messages shortly before this date. Growing concerned, the landlord stated that she attended the property on June 28, 2017 to discover it abandoned. The landlord noted that the tenant did not provide the landlord with a forwarding address, nor did she responded to repeated text messages.

Analysis

Section 38 of the *Act* requires the landlord to either return a tenant’s security deposit in full or file for dispute resolution for authorization to retain the deposit within 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant’s forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant’s written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant’s security or pet deposit if an order to do so has been issued by an arbitrator.

Undisputed testimony was provided to the hearing that the landlord served a 10 Day Notice to the tenant in person on June 2, 2017. The tenant did not pay the outstanding rent within five days of receiving this notice, nor did they submit an application disputing this notice. Pursuant to section 46(5) of the *Act* the tenant is conclusively presumed to have accepted the notice, therefore, the tenancy ended on the effective date of the 10 Day Notice, June 12, 2017.

Undisputed testimony provided by the landlord stated that the tenant abandoned the rental property, did not provide a forwarding address and did not pay rent for June 2017. The landlord explained that she applied to retain the tenant’s security deposit on June 16, 2017 and served the tenant with notice of this application on June 18, 2017.

I find that the landlord has fulfilled the criteria under section 38 of the *Act* to retain the tenant's security deposit.

As the landlord was successful in her application, she may recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord may retain the tenant's security deposit in full.

The landlord is provided with a Monetary Order of \$100.00 representing a return of the filing fee. The tenant must be served with this Order as soon as possible. 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: August 11, 2017

Residential Tenancy Branch