



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the hearing package was sent to the tenant via registered mail on June 20, 2017 and the registered mail was returned as unclaimed. The landlord orally provided the registered mail tracking number as proof of service. The landlord testified that the registered mail notice cards arrived in her mailbox and that she delivered the registered mail notice cards to the tenant by sliding them under her door while the tenant was still residing in the rental unit. I heard that the tenant was living in the rental unit until July 1, 2017. Under section 90 of the Act, a person is deemed to have received documents five days after mailing even if they refuse to accept or pick up their mail. Therefore, I deemed the tenant sufficiently served with the hearing documents and I continued to hear from the landlord without the tenant present.

Since the tenant has vacated the rental unit, an Order of Possession is no longer required and I do not provide one with this decision.

As for the landlord's monetary claim, I determined that it was calculated as unpaid rent for June 2017 plus the security deposit. The landlord acknowledged that she is seeking to recover the unpaid balance of rent owing for June 2017 after deducting the security deposit, plus recovery of the filing fee. Since the monetary claim is being reduced, I found an amendment to the monetary claim to be non-prejudicial to the tenant and I amended the application accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The landlord purchased the subject property in November 2016 and the tenant was an existing tenant. The landlord received a security deposit of \$450.00 from the former owner(s) when the property transferred to her and the tenant was required to pay rent of \$900.00 on the first day of every month.

On May 1, 2017 the landlord attempted to end the tenancy by way of a "mutual agreement" to be effective July 1, 2017. The tenant was not agreeable to ending the tenancy by way of the mutual agreement proposed to her by the landlord, as evidenced by a letter the tenant wrote to the landlord on May 31, 2017.

The tenant did not pay rent for June 2017. Rather, the tenant provided the landlord a letter on June 1, 2017 indicating the tenant was leaving the landlord with the security deposit of \$450.00 "until we reach reasonable resolution" regarding the mutual agreement. On June 6, 2017 the landlord posted a 10 day Notice to End Tenancy for Unpaid Rent on the door of the rental unit. The 10 Day notice indicates rent of \$600.00 was outstanding as of June 1, 2017 and a stated effective date of June 16, 2017. The tenant did not dispute the 10 Day Notice, did not pay the outstanding rent, and did not vacate the rental unit until July 1, 2017.

The landlord seeks to retain the tenant's security deposit and obtain a Monetary Order for the balance of rent owing of \$450.00 plus recovery of the filing fee.

Analysis

I accept the unopposed evidence before me that the tenant was required to pay rent of \$900.00 on the first day of every month.

Under section 26 of the Act a tenant is required to pay rent when due in accordance with their tenancy agreement until such time the tenancy legally ends. A tenancy ends in one of the ways provided under section 44 of the Act. A tenancy may end by way of a mutual agreement between the parties; however, in this case, the evidence shows that the parties did not reach a mutual agreement to end the tenancy. The only valid

notice to end tenancy before me is a copy of the 10 Day Notice to End Tenancy for Unpaid Rent issued to the tenant on June 6, 2017. Accordingly, I find the tenancy came to an end by way of the 10 Day Notice and the tenant remained obligated to pay rent for June 2017. Since the tenant failed to pay rent for June 2017, I grant the landlord's request to recover the unpaid rent of \$900.00 by retaining the tenant's \$450.00 security deposit and providing the landlord with a Monetary Order for the balance remaining of \$450.00. I further award the landlord recovery of the \$100.00 paid for this application.

In light of the above, the landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order in the sum of \$550.00 to serve and enforce upon the tenant.

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$550.00 to serve and enforce upon the tenant.

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 22, 2017

Residential Tenancy Branch