



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and the Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy started on May 1, 2017. Rent of \$1,650.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$825.00 as a security deposit. The Tenant failed to pay full rent for June 2017 and on June 14, 2017 the Landlord served the Tenant with a 10 day notice to end the tenancy for unpaid rent (the “Notice”). The Notice indicates that rent of

\$1,050.00 was owed for June 1, 2017. The Tenant did not dispute the Notice and on June 29, 2017 the Tenant paid the outstanding rent for June 2017. The Landlord issued the Tenant with a receipt for those monies indicating that the monies were accepted for use and occupancy only. The Tenant did not pay the rent for July, August and September 2017 and has not moved out of the unit.

The Tenant wishes to negotiate a payment schedule for the rents owing however the Landlord does not wish to negotiate and asks for an order of possession for September 15, 2017.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid 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 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. Based on the undisputed evidence of the Landlord I find that the Landlord gave the Tenants the Notice and the Tenants did not dispute the Notice. As a result I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides 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. Based on the undisputed evidence of unpaid rent I find that the Landlord has substantiated an entitlement to unpaid rent for July, August and for the period September 1 to 15, 2017 in the total amount of **\$4,125.00** (1,650.00 + 1,650.00 + 825.00). As the Landlord has been successful with its application I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$4,225.00**. Deducting the security deposit plus zero interest of **\$825.00** leaves **\$3,400.00** owed by the Tenant to the Landlord.

Conclusion

I grant the Landlord an Order of Possession effective 1:00 p.m. on September 15, 2017.

I order that the Landlord retain security **deposit** and interest of \$825.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$3,400.00**. If necessary, this order may be filed in the Small Claims 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: September 07, 2017

Residential Tenancy Branch