



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

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; and
- a monetary order for unpaid rent pursuant to section 67.

The landlord I.G., the landlord's daughter M.G. and the tenant A.C. (the tenant) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's daughter M.G. (the landlord) stated that she would be representing the interests of the landlord in this matter.

The tenant acknowledged receipt of the Landlord's Application for Dispute Resolution (the Application) and evidentiary package on or about August 14, 2017 via registered mail. Pursuant to section 88 and 89 of the *Act*, I find the tenant has been duly served with these documents.

The landlord acknowledged receipt of the tenant's evidentiary package. Pursuant to section 88 of the *Act*, I find the landlord has been duly served with the tenant's evidence.

The landlord entered into evidence a signed and witnessed Proof of Service Document attesting to the fact that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted to the tenant's door at 11:30 a.m. on July 28, 2017. The tenant confirmed receipt of the 10 Day Notice. In accordance with section 88 of the *Act*, I find the tenant was duly served with the 10 Day Notice, identifying \$1,600.00 in rent owing for this tenancy.

Preliminary Matters

During the course of the hearing it was established that the tenant gave possession of the rental back to the landlord on August 31, 2016 as a result of a Two Month Notice

that was given to the tenant in June of 2017. The landlord requested to withdraw their application for an Order of Possession.

The landlord's application for an Order of Possession is withdrawn.

The landlord's application for a monetary award of \$1,600.00 is for the following item:

Item	Amount
Unpaid rent for July 2017	\$1,600.00
Requested Monetary Order	\$1,600.00

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence, including written statements and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord gave written evidence that this tenancy began on February 01, 2013, with a monthly rent of \$1,600.00. The landlord testified that rent is due on the first day of the month and that they continue to retain a security deposit of \$800.00. The landlord stated that the tenant's sister, who is named on the tenancy agreement but has since moved out, has an interest in the security deposit and it is being handled separately from this proceeding. The tenant confirmed this to be true and that a forwarding address was provided to the landlord on August 31, 2017, therefore I will not address the security deposit in this hearing.

A copy of the 10 Day Notice, dated July 27, 2017, with an effective date of August 09, 2017, was included in the landlord's evidence.

A written statement from the tenant was provided in the tenant's evidence indicating that the rent for July 2017 was paid on July 03, 2017, by placing cash in an envelope and leaving it in the landlord's mailbox as has been done in the past when paying the monthly rent. The tenant testified that, in the past they would call the landlord immediately after placing the rent in the mailbox to let them know it was there. The tenant states in the written statement that their friend J.W. witnessed the tenant paying the rent. Copies of the tenant's bank statements from December 2016 until April 2017

and copies of pictures regarding other tenancy issues were also provided as written evidence from the tenant.

The landlord testified that on July 06, 2017, the landlord called the tenant to ask for rent and issued a 10 Day Notice at some point after this call took place. The landlord testified that they misplaced their copies of the 10 Day Notice that was issued at that time and then completed a second 10 Day Notice on July 27, 2017 and went to the rental unit to serve the 10 Day Notice to the tenant and have a conversation about the unpaid rent with the tenant. The landlord testified that the tenant did not answer the door and refused to talk to the landlord. The landlord testified that J.W. was at the unit and approached the landlord, accusing them of harassing the tenant. The landlord testified that they told J.W. that the landlord just wanted to talk to the tenant about the unpaid rent for July 2017. The landlord testified that J.W. did not know that the tenant had not paid the rent for July 2017 and did not mention that she had witnessed the tenant paying the rent.

The landlord, in reference to the tenant's copies of bank statements provided as evidence, stated that the bank statements only prove rent was paid up until April 2017 and do not contain any information concerning the July 2017 rent being paid.

The tenant testified that the reason that she did not answer the door to talk to the landlord on July 27, 2017, was that she was instructed by her lawyer to not have any contact with the landlord until the hearing. The tenant stated that she felt harassed by the landlords due to multiple notices being given by the landlord to the tenant and that the landlord was angry about not having entitlement to August 2017 rent as a result of the Two Month Notice compensation in accordance with section 51 of the *Act*.

The tenant testified that on July 03, 2017, she dropped off the rent for July 2017 in the mailbox. The tenant testified that normally she calls the landlord soon after the rent is placed in the mailbox but does not remember if she called the landlord on this particular occasion.

The landlord responded to the tenant's testimony and stated that there was no hearing scheduled as of July 27, 2017, the day that the landlord was trying to talk to the tenant.

The tenant stated that she did go to a lawyer to seek advice and was instructed that the tenant did not have to talk to the landlord.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlords, regardless of whether the landlords comply with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*. The tenants did not provide any evidence that they were entitled to deduct any amounts from their rent.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find the tenant has not provided any evidence that the rent for July 2017 was paid to the landlord. Although the tenant states that their friend J.W. was a witness to the rent being paid, no witness statement from J.W. was provided, J.W. was not called as a witness and no phone number was provided for J.W. although phone numbers of other people, for other issues not related to the July 2017 unpaid rent, were provided in the same statement.

I find that the bank statements provided by the tenant are not for July 2017 and only cover the period from December 2017 until April 2017. I find that the tenant does not know whether they called the landlord after the July 2017 rent was paid although the tenant knows that she called the landlord after every previous time that rent was paid in this manner. I find that this statement impacts the credibility of the tenant's testimony that the July 2017 rent was paid. I further find that the tenant's testimony suffers from inconsistencies such as when she states she was instructed to not talk to the landlord until the hearing takes place, when there was actually no hearing scheduled on the date in question, July 27, 2017.

I find that, based on the above and on a balance of probabilities, I prefer the landlord's written evidence and sworn testimony. I find that the landlord is entitled to a monetary award of \$1,600.00 for unpaid rent owing for this tenancy for July 2017.

Conclusion

I grant a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent:

Item	Amount
Unpaid rent for July 2017	\$1,600.00
Monetary Order	\$1,600.00

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlords' application for an Order of Possession for unpaid rent is withdrawn.

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 13, 2017

Residential Tenancy Branch