



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes: OPR, MNR, MNSD, FF

Introduction:

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with the landlord’s application based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 1, 2017 (the “10 Day Notice”). The landlord applied for an order of possession for unpaid rent and a monetary order for unpaid rent and recovery of the application filing fee. However, at the outset of the hearing the landlord’s agent withdrew the request for an order of possession.

The tenant did not attend the hearing. An agent for the landlord attended and was given a full opportunity to be heard, to present documentary evidence and to make submissions.

As the tenant did not attend the hearing, service of the landlord’s application and the notice of hearing were considered. The landlord’s agent provided affirmed testimony that he served the tenant by registered mail to the rental unit address in early July. A copy of the registered mail receipt was in evidence. The agent advised that the registered mail had been returned unclaimed. Section 90 of the Act provides that a party is deemed to have been served five days after the registered mail has been sent. I accept that the tenant has been served in accordance with the Act. Refusal to accept services is not a ground for review under the Act.

The landlord’s agent amended the application during the hearing to add a claim for outstanding July and August rent and I accepted the amendment. Rule 4.2 of the Rules of Procedure allows for amendments at the time of hearing with respect to matters that can reasonably be anticipated, such this.

Issues to be Decided

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

Is the landlord entitled to recover the application filing fee?

Background and Evidence

There was no written tenancy agreement in evidence. The agent testified that this tenancy began in or about March or April of 2016 and was a month to month tenancy with rent of \$2,250.00 payable on the first day of each month. A security deposit and a pet deposit of half the monthly rent each were paid at the beginning of the tenancy and remain in the landlord's possession.

The tenant paid only \$700.00 for August of 2016 and was supposed to have made up that shortfall over time but has not done so. The tenant did not pay rent for June, July, or August of 2017.

The tenant was served with the 10 Day Notice June 1, 2017 when it was posted on the door of the rental unit. The agent further testified that the tenant left the rental unit on or about August 5, 2017 and the tenant has not filed an application to dispute the 10 Day Notice.

Analysis

The landlord's agent provided undisputed evidence at this hearing, as the tenant did not attend. Based on that undisputed testimony, I find that the tenant was served with the 10 Day Notice on June 4, 2017, three days after it was posted as per s. 90 of the Act. I further find that he did not file an application to dispute the 10 Day Notice or pay the overdue rent.

Section 46(5) of the Act provides that if a tenant does not pay the amount outstanding or apply to dispute a 10 Day Notice within five days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date.

In accordance with section 46(5) of the Act, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on June 14, 2017, the correct effective date on the 10 Day Notice.

Sections 7 and 67 of the Act establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant owes \$8,300.00 inclusive of August, 2017, and I award the landlord this amount.

As the landlord was successful in this application, I find that the landlord is also entitled to recover the \$100.00 filing fee.

The landlord continues to hold the tenant's deposits. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I authorize and order the landlord to retain the tenant's security and pet deposits in partial satisfaction of the monetary claim.

Conclusion.

I issue a monetary order for the landlord in the following terms, which allows the landlord to obtain a monetary award for unpaid rent and the filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid rent	\$8,300.00
Filing fee	\$100.00
Less security and pet deposit	-\$2,250.00
Total Monetary Order	\$6,175.00

I issue a monetary order in the landlord's favour in the amount of **\$6,175.00**. The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it 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 Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided.

Dated: September 14, 2017

Residential Tenancy Branch