



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF MNDC

Introduction

This hearing was convened because the landlord filed for Dispute Resolution. The participatory hearing was held on September 21, 2017. The landlord sought the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- to recover the filing fee for the cost of this application; and,
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The tenant did not attend the hearing. The landlord provided affirmed testimony at the hearing. The landlord testified the Notice of Hearing along with supporting documentary evidence was given to an adult male (approximately 30 years old) who apparently resided with the tenant, on July 21, 2017. The landlord testified that the adult male answered the front door, but would not say who he was and was generally uncooperative.

The landlord testified that he called the tenant two days after he left the Notice of Hearing with the adult male who answered the front door, and the tenant confirmed that he got the package and knew about the upcoming hearing. I am satisfied that the tenant was sufficiently served the Notice of Hearing package. I find he received this package on July 21, 2017.

The landlord stated that he no longer requires an order of possession, given that the tenant moved out in August, and he requested that his application be amended to reflect this. Further, the landlord is only seeking unpaid rent (the second ground listed above), as well as compensation for the filing fee, and does not require an application a

monetary order for money owed or compensation for damage or loss under the *Act* (the 4th ground listed above). In consideration of all of this information, I hereby amend the landlord's application as specified above.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord stated that he has lost the written tenancy agreement. However, during the hearing, he was able to summarize the particulars of the agreement. The landlord stated that the tenant started renting the unit in September of 2015. He also stated that rent in the amount of \$1,400.00 is due on the first day of each month.

The landlord testified that the tenant failed to pay rent for March, April, May, June, and July of 2017. The landlord also provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice). The 10 Day Notice specifies that, as of July 6, 2017, the tenant had unpaid rent which totalled \$7,000.00, for the previous 5 months' rent. As per the Proof of Service document, the 10 Day Notice was given to the tenant in person on July 6, 2017. Service was witnessed by an individual named X.F.K. The landlord stated that no payments were made after he served the 10 Day Notice.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent

in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

With respect to the landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence before me to demonstrate that the tenant owes and has failed to pay monthly rent of \$1,400.00 for March, April, May, June, and July of 2017. As such, I find the landlord is entitled to a monetary order for \$7,000.00.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was successful in this hearing, I also order that the tenant repay the \$100.00 fee the landlord paid to make the application for dispute resolution.

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$7,100.00** comprised of rent owed and the filing fee. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 21, 2017

Residential Tenancy Branch