



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This participatory hearing was convened after the issuance of a September 28, 2017, interim decision. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's (RTB) direct request proceeding, as had been originally requested.

The Adjudicator reconvened the landlord's application to a participatory hearing for the following:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Residential Tenancy Act (the Act)*; and
- a monetary order for unpaid rent pursuant to section 67 of the *Act*.

The tenant did not attend this hearing, although I waited until 1:43 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's agents attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord S.F. stated that they would be the primary speaker on behalf of the landlord.

The landlord testified that a copy of the notice of this reconvened hearing and an evidentiary package was sent to the tenant by way of registered mail on September 29, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the notice of this hearing and evidentiary package on October 04, 2017, the fifth day after its registered mailing.

The landlord also gave documentary evidence that he sent a copy of the Landlord's Application for Dispute Resolution (the Application), which was a part of the direct request proceeding package, to the tenant by way of registered mail on September 14, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this

registered mailing. In accordance with section 88, 89 and 90 of the *Act*, I find the tenant was deemed served with the Application and direct request proceeding package on September 19, 2017, the fifth day after its registered mailing.

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 door of the rental unit at 11:00 a.m. on August 24, 2017. In accordance with sections 88 and 90 of the *Act* I find that the 10 Day Notice was deemed served to the tenant on August 27, 2017.

At the outset of the hearing the landlord testified that the tenant vacated the rental unit sometime around the first week of October 2017. The landlord requested to withdraw their application for an Order of Possession.

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

Issues(s) to be Decided

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

Background and Evidence

The landlord gave written evidence that this tenancy began on February 01, 2017, with a monthly rent of \$1,000.00, due on the first day of each month. The landlord testified that they continue to retain a \$1,000.00 security deposit.

A copy of the signed 10 Day Notice, identifying \$4,000.00 in rent owing for this tenancy, dated August 24, 2017, with an effective date of September 07, 2017, was included in the landlord's evidence.

The landlord gave undisputed affirmed testimony that they are seeking the unpaid monthly rent for May 2017, June 2017, July 2017 and August 2017, for a total monetary claim of \$4,000.00.

Analysis

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.

Based on the undisputed written evidence and affirmed testimony of the landlord, I find the landlord is entitled to a monetary award of \$4,000.00, for unpaid rent owing for this tenancy for May 2017, June 2017, July 2017 and August 2017.

Section 19(1) of the *Act* stipulates that a landlord must not require or accept a security deposit greater than $\frac{1}{2}$ of one month's rent payable under the tenancy agreement. In accordance with section 19(1) of the *Act*, I find that the landlord is only allowed to accept \$500.00 for the security deposit and that the tenant may deduct the \$500.00 in overpayment of the security deposit from rent owing to the landlord for August 2017.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, and to retain the tenant's security deposit:

Item	Amount
Unpaid May 2017 Rent	\$1,000.00
Unpaid June 2017 Rent	1,000.00
Unpaid July 2017 Rent	1,000.00
Balance of Unpaid August 2017 Rent	500.00
Less Security Deposit	-500.00
Total Monetary Order	\$3,000.00

The landlord is 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.

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: November 06, 2017

Residential Tenancy Branch