



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on December 5, 2017 (the "Notice").

The Landlord originally applied by way of Direct Request Proceeding pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act"). By Decision dated December 21, 2017, the Landlord's application was adjourned to a participatory hearing.

The participatory hearing was conducted by teleconference on January 16, 2018. Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that he served the Tenant with the Notice of Hearing and the Application on December 27, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of January 1, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Landlord testified that he was informed on December 29, 2017 that the Tenant had moved from the rental unit; accordingly, he no longer sought an Order of Possession.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation based on the 10 Day Notice?

Background and Evidence

This tenancy began October 15, 2017. Monthly rent was payable in the amount of \$500.00 and the Tenant paid a security deposit in the amount of \$300.00.

The Tenant failed to pay the rent for December 2017 at which time the Landlord issued the Notice. The Notice informed the Tenant that the Tenant had five days in which to pay the outstanding rent or make an application for dispute resolution. The Landlord testified that the Tenant did not pay the outstanding rent or make an application for dispute resolution

Analysis

Based on the filed Proof of Service—Notice to End Tenancy, I find that the Tenant was served with the Notice on January 5, 2018 by posting to the door. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later. Accordingly, I find pursuant to section 88, that the Tenant was served with the Notice as of January 9, 2018.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, January 13, 2018. The Notice also explains the

Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

Analysis

Based on the undisputed testimony and evidence before me, and on a balance of probabilities, I find as follows.

I accept the Landlord's evidence that the Tenant vacated the rental unit thereby ending the tenancy.

I find that the Landlord has established a total monetary claim of \$600.00 comprised of unpaid rent for December 2017 and the \$100.00 fee paid by the Landlord for this application. I Order that the Landlord retain the security deposit of \$300.00 in partial satisfaction of the claim and I grant the Landlord an Order under section 67 of the *Act* for the balance due of \$300.00. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

Conclusion

The Landlord is entitled to monetary compensation for unpaid rent and recovery of the filing fee; to this end, the Landlord may keep the security deposit in partial satisfaction of the claim, and is granted a Monetary Order for the balance due in the amount of **\$300.00**.

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: January 17, 2018

Residential Tenancy Branch