



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FF, MNR

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought an Order of Possession and monetary compensation for unpaid rent based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on December 4, 2017 (the "Notice").

The Landlord originally proceeded by way of an *ex parte* Direct Request Proceeding pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*). The matter was adjourned to a participatory teleconference hearing before me on January 24, 2018 at 9:00 a.m.

Only the Landlord called into the hearing on January 24, 2018. As the Tenant did not call in, service of the hearing package was considered. The Landlord testified that he served the Tenant with the Notice of Hearing and his Application on December 30, 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 A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 4, 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.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to monetary compensation for unpaid rent?
3. Should the Landlord recover the filing fee for this application?

Background and Evidence

The Landlord testified as to the tenancy as follows: the tenancy began May 1, 2017; monthly rent was payable in the amount of \$2,250.00; and, the Tenant paid a security deposit in the amount of \$2,250.00.

The Landlord stated that the Tenant stopped paying rent as of August 2017. The Landlord posted the Notice to the rental unit door on December 4, 2017 indicating that the sum of \$11,250.00 was owed for rent.

The Landlord stated that the Tenant made several promises to pay and provided cheques for the balance owing, however none of the cheques were honoured. The Landlord then discovered that the Tenant had been charged for writing fraudulent cheques in another province.

The Notice informed the Tenant that he had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of December 15, 2017. The Landlord confirmed that the Tenant failed to pay the outstanding rent and failed to apply for dispute resolution.

The Landlord confirmed that at the time of the hearing the Tenant owed the following:

August 2017 rent	\$2,250.00
September 2017 rent	\$2,250.00
October 2017 rent	\$2,250.00
November 2017 rent	\$2,250.00

December 2017 rent	\$2,250.00
January 2018 rent	\$2,250.00
TOTAL	\$13,500.00

Analysis

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

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Pursuant to section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenant had no authority under the *Act* to not pay rent.

I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlord has established a total monetary claim of \$13,600.00 comprised of \$13,500.00 in unpaid rent and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$2,250.00 in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of \$11,350.00. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

While not at issue before me, the Landlord was reminded to consider section 13 of the *Residential Tenancy Act* as it relates to limits on the amount of security and pet damage deposits.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the security deposit in partial satisfaction of the claim, and is granted a Monetary Order for the balance due.

This Decision is final and binding on the parties, except as otherwise provided under the Act, and 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 24, 2018

Residential Tenancy Branch