



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL & OPRM-DR**

Introduction

This is an application brought by the Landlord requesting an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, requesting a monetary order for outstanding rent, and requesting recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issues are whether or not the applicant has established the right to an Order of Possession, and whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

The landlord testified that this tenancy began on April 1, 2014, and that the present monthly rent is \$2000.00, due at the first of each month.

The landlord further testified that, as of today's date, the following rent is outstanding:

June 2017 rent outstanding	\$700.00
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November 2017 rent outstanding	\$2000.00
January 2018 rent outstanding	\$2000.00
February 2018 rent outstanding	\$2000.00
Total	\$6700.00

The landlord further testified that on December 6, 2017 the tenant was personally served with a 10 day Notice to End Tenancy for nonpayment of rent, and has failed to comply with that notice. The landlord further states that the tenant did not dispute the notice.

The landlord is therefore requesting an Order of Possession for as soon as possible, and is requesting a monetary order for the outstanding rent and recovery of the filing fee.

The tenant testified that she does not believe she owes the full amount of rent claimed by the landlord, especially because the landlord increase the rent by \$300.00 in April of 2017 without giving the required three-month notice of rent increase.

The tenant further testified that she does not dispute that there is some rent outstanding however she does not believe the landlord should be getting an order for the full amount of rent claimed.

Analysis

Section 46 of the Residential Tenancy Act states:

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

It is my decision, pursuant to sections 46 and 62 of the Residential Tenancy Act, that, since the tenant has not filed a dispute of the Notice to End Tenancy, and has admitted that there is rent outstanding, the tenant is conclusively presumed to have accepted that the tenancy ends, and I will allow the landlords request for an Order of Possession.

However it is also my decision that I am not willing to issue any monetary order at this time as the amount of rent outstanding is not clear. The landlord has not provided a clear breakdown of rent paid and rent outstanding, and the tenant is also arguing that rent was increased without the proper notice of rent increase.

It is my decision that I will dismiss the monetary portion of this claim with leave to reapply, because neither the landlord nor the tenant have supplied sufficient information for me to make an informed of decision on the amount of rent outstanding.

Conclusion

The monetary portion of this claim is dismissed with leave to reapply, other than the \$100.00 filing fee, which I order the tenant to pay.

I have issued an Order of Possession, pursuant to sections 46 and 55 of the Residential Tenancy Act, that is enforceable two days after service on the tenant.

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: February 13, 2018

Residential Tenancy Branch