



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE KETTLE SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code OPR

Introduction

This decision pertains to the Landlord's application for dispute resolution made on February 13, 2018, under the *Residential Tenancy Act* (the "Act"). The Landlord seeks an order of possession for unpaid rent.

The Landlord attended the hearing before me and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Tenant did not attend the hearing.

The Landlord testified that they served the Tenant with a Notice of Dispute Resolution Hearing on February 15, 2018, by way of registered mail. A Canada Post Registered Mail tracking number was provided to me. Pursuant to section 90 of the Act, the notice of hearing was deemed to be received by the Tenant on the fifth day after it is mailed.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issue of this application will be considered in my decision.

Issue

Is the Landlord entitled to an order of possession for unpaid rent?

Background and Evidence

The Landlord testified that a tenancy agreement was signed by both parties for a tenancy commencing October 1, 2017. Monthly rent of \$574.00 is due on the first of the month. The Tenant paid a security deposit of \$187.50 and a pet damage deposit of \$145.00.

The Landlord testified that they served the Tenant with a 10 Day Notice for Unpaid Rent (the "Notice") on December 5, 2017, with an end of tenancy date of December 18, 2017, by leaving a copy of the Notice on the Tenant's door. Pursuant to section 90 of the Act, the 10 Day Notice is deemed to have been received on the third day after it is attached to the rental unit door.

The Landlord testified that the Tenant has not paid full rent for November 2017 (\$474.00 was paid), and has not paid rent for December 2017, January 2018, February 2018, March 2018, and April 2018.

The Tenant continues to reside in the rental unit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Pursuant to section 46 of the Act, the Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains that the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord testified, and provided documentary evidence to support their submission, that the Tenant did not pay rent when it was due, and has not paid rent for the months of December 2017 to April 2018, inclusive, and only partial rent for November 2017. There is insufficient evidence that the Tenant applied to cancel the notice. Taking into consideration all of the evidence and unchallenged testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving their claim.

Pursuant to sections 46 and 55 of the Act, I grant an order of possession to the Landlord.

The Landlord applied to amend their application for an order to retain the security and pet damage deposit in partial payment of the unpaid rent. I accepted the amendment

and so order that the security and pet damage deposits be held by the Landlord for unpaid rent.

Conclusion

I hereby grant an order of possession for unpaid rent.

I hereby order that the security and pet damage deposits be held in partial payment for unpaid rent.

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: April 23, 2018

Residential Tenancy Branch