



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were served, by registered mail sent on February 23, 2018. A Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later.

The landlord indicated that the package was returned unclaimed. Refusal or neglect to pick up the package does not override the deemed service provisions under the Act. I find that the tenant has been duly served in accordance with the Act.

The landlord gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

Issues to be Decided

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

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

Based on the testimony of the landlord, I find that the tenant was served with a notice to end tenancy for non-payment of rent on January 13, 2018, by positing to the door, which was photographed and witnessed by a third party. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

The landlord testified that rent in the amount of \$1,500.00 was payable on the first of each month. The landlord stated that the tenant did not pay any rent for January 2018, when the notice to end tenancy was issued. The landlord stated that the tenant has not paid any rent for January, February, March and April 2018. The landlord seeks a monetary order for unpaid rent in the amount of \$6,000.00.

The landlord testified that the tenant has not paid their portion of utilities. The landlord stated the tenant was to pay 1/3 of the snow plowing, which their portion was the amount of \$335.00 and 2/3 of the propane, which their portion was, the amount of \$400.00. The landlord seeks a monetary order for unpaid utilities in the amount of \$735.00.

Analysis

Based on the above, the testimony, and evidence, 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 under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two 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 the tenant has breached section 26 of the Act, when they failed to pay rent and utilities. I find that the landlord has established a total monetary claim of **\$6,835.00** comprised of unpaid rent, unpaid utilities, and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$750.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$6,085.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

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, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 26, 2018

Residential Tenancy Branch