



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act (the “Act”), for an order of possession, a monetary order for unpaid rent, and for an order to retain the security deposit in partial satisfaction of the claim.

The Landlord’s agent 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 sent by registered mail on April 13, 2018, and 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. I find that the Tenant has been duly served in accordance with the Act.

The Landlord's agent (the Agent) appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession for cause?
- Is the landlord entitled to a monetary order for unpaid rent?

- Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Agent testified that he could not confirm the exact date the tenancy began; however to was approximately four to five years ago and was a month to month tenancy, with no written agreement. Rent in the amount of \$1,500.00 was to be paid by the first day of each month and the Landlord was holding a \$700.00 security deposit.

The Agent testified that he served the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") to the Tenant on April 2, 2018 in person. The Notice has an effective date of April 12, 2018 and an outstanding rent amount of \$1,500.00 for April 2018. The Agent testified that he submitted an amendment to his original application; stating that the Tenant had not paid the rent for May 2018 and requested that an additional \$1,500.00 be added to his claim for a monetary order for unpaid rent. The Agent testified that the Tenant has not paid the outstanding amount indicated on the Notice or served the Landlord with an application to show they had disputed the Notice.

The Agent also testified that the Tenant, moved out of the rental unit as of April 30, 2018. However, he is still requesting that an order of possession be granted.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

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.

I find that the Tenant did not pay the rent or dispute the Notice, and is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to a Monetary Order for unpaid rent for April 2018. However, I also find that the Landlord is not entitled to rent for May 2018 as the tenancy ended on April 30, 2018.

Section 55(2) of the *Act* states that a landlord may request an order of possession if a notice to end tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

I accept the testimony of the Agent that the Tenant moved out of the rental at the end of April and that the Tenancy ended as of April 30, 2018. However, as the Agent has requested it, I will issue the order of possession dated for 1:00pm on April 30, 2018.

Pursuant to sections 55 and 67 of the *Act*, I grant the Landlord an order of possession and a monetary order in the amount of \$800.00, which is comprised of, \$1,500.00 for the outstanding rent due at the end of the tenancy, less the \$700.00 that the Landlord holds as a security deposit.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee.

Conclusion

I grant an Order of Possession to the Landlord effective at 1:00pm on April 30, 2018.

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a Monetary Order in the amount of \$900.00 for the outstanding rent and for the recovery of the filing fee for this application. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 07, 2018

Residential Tenancy Branch