



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR OPC MNR MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent and utilities pursuant to section 55;
- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:50 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to provide testimony, to present evidence and to make submissions.

The landlord testified that on April 27, 2018, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The landlord provided a registered mail receipt and tracking number in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began approximately 2-3 years ago and the current monthly rent is \$1450.00 payable on the 1st day of each month. The tenant paid a security deposit of \$725.00 at the start of the tenancy which the landlord continues to hold.

The landlord served the tenant with a 10 Day Notice and a One Month Notice on April 9, 2018 by posting to the door of the rental unit. The "corrected" effective date of the 10 Day Notice was April 22, 2018 and the effective date of the One Month Notice was May 31, 2018.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated in the 10 Day Notice within five days of service of the Notice or file an application to dispute wither of the Notices.

The landlord testified that the tenant subsequently paid April 2018 rent and paid \$1350.00 towards May 2018 rent. The landlord testified that the balance of \$100.00 for May 2018 rent and the full amount of \$1450.00 for June 2018 rent remains outstanding.

The landlord also submitted a signed mutual agreement to end tenancy dated May 31, 2018 with an effective date of July 31, 2018. The landlord testified that this agreement was entered into on condition that the tenant pay the outstanding \$100.00 rent for May 2018 and continue to pay future rent as per the tenancy agreement.

Analysis

I am satisfied that the tenant was served with the 10 Day Notice and One Month Notice and that the tenant did not pay the outstanding rent or file an application to dispute either of these notices within the time period permitted under the Act. However, based on the landlord's own evidence, it appears the parties have since entered into a mutual agreement to end tenancy effective July 31, 2018. Therefore, I find the landlord has temporarily reinstated the tenancy. The landlord did not provide any evidence of issuing a new 10 Day Notice for June 2018 rent or amend this application to request an order of possession based upon the mutual agreement.

The landlord's application for an order of possession based upon the 10 Day Notice and One Month Notice dated April 9, 2018 is therefore dismissed without leave to reapply. The landlord is at liberty to issue a new 10 Day Notice for unpaid June 2018 rent and/or file an application for an order of possession based upon the mutual agreement to end tenancy.

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 this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord's uncontested evidence and claim for outstanding rent of \$1550.00 for May 2018 and June 2018.

As the landlord was partly successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$1650.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1650.00. 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: June 14, 2018

Residential Tenancy Branch