



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the *Act*).

The landlord applies for:

- An Order of Possession pursuant to Sections 46 and 55;
- A Monetary Order for unpaid rent pursuant to Section 67;
- An order to retain the security deposit, pursuant to Section 72; and
- Authorization to recover the filing fee for this application from the tenants pursuant to Section 72.

The hearing was conducted via teleconference. The landlord attended the hearing 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 this hearing, although I left the teleconference hearing connection open for ten minutes to enable the tenant to participate in the hearing. I confirmed the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified the tenant was served with the Application for Dispute Resolution and supporting documents pursuant to Section 89 of the *Act* by registered mail on December 21, 2017. The landlord provided the Canada Post tracking number for the registered mail. Pursuant to Section 90, the tenant is deemed served on December 26, 2017, the 5th day after mailing.

Based on the submissions of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act* and is deemed to have received the hearing package on December 26, 2017.

Issues to be Decided

The issues to be decided:

- Is the landlord entitled to an Order of Possession pursuant to Section 46 and 55 of the *Act*?
- Is the landlord entitled to a Monetary Order pursuant to Section 67 of the *Act*?
- Is the landlord entitled to retain the security deposit pursuant to Section 72 of the *Act*?
- Is the landlord entitled to reimbursement of the filing fee pursuant to Section 72(1) of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on November 15, 2017, indicating a monthly rent of \$2,100.00, due on the first day of each month, for a tenancy commencing on December 01, 2017;
- A copy of the 10 Day Notice dated December 2, 2017, for \$2,100.00 in unpaid rent. The 10 Day Notice provides the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of December 12, 2017 (corrected to December 15, 2017);
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door on December 2, 2017 thereby effecting service three days after posting on December 5, 2017 pursuant to Sections 88 and 90; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy indicating rent was not paid for the month of December 2017.

The landlord testified she received \$200.00 from the tenant as a security deposit at the time of signing the agreement. The landlord retains the security deposit. The tenant has not provided her forwarding address for the return of the security deposit and has not authorized the landlord to retain any part thereof.

The landlord provided uncontradicted testimony no rent has been received after service of the 10 Day Notice and rent of \$2,100.00 for one month is unpaid and owing to the landlord.

The landlord testified the tenant did not move in to the premises and she no longer requires an Order of Possession.

The landlord testified no condition inspection report was completed as the tenant did not occupy the premises.

Analysis

I have reviewed all documentary evidence and testimony. I am satisfied the form and content of the landlord's 10-Day Notice complies with Section 52 of the *Act*. I am satisfied the tenant was served with the 10-Day Notice on December 5, 2017 in accordance with Section 88 and 90 of the *Act* and with the Notice of Hearing documents in accordance with Section 89 of the *Act*.

I am satisfied the tenant has not paid the overdue rent or disputed the 10-Day Notice within the five-day period following service on December 5, 2017. Therefore, pursuant to Section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice (being the corrected date of December 15, 2017) requiring the tenant to vacate the rental unit by that date.

As the tenant did not occupy the premises, the landlords do not require an Order of Possession pursuant to Section 55 of the *Act*.

Based on the uncontradicted evidence of the landlord, I find the landlord is entitled to a Monetary Order pursuant to Section 67 in the amount of \$2,100.00 for unpaid rent as well as the \$100.00 filing fee paid by the landlord for this application for a total of \$2,200.00.

In accordance with the offsetting provisions of Section 72 of the *Act*, I allow the landlord to retain \$200.00 of the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant a Monetary Order in the amount of **\$2,000.00** comprised of \$2,100.00 in unpaid rent and the \$100.00 filing fee paid by the landlord for the Application less the security deposit of \$200.00. This Order must be served on the tenant. If the tenant fails to comply with this Order, the landlord may file the Order in the Provincial Court (Small Claims) and be 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 29, 2018

Residential Tenancy Branch