



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was ordered pursuant to a decision issued by an Adjudicator on June 5, 2018 in response to the landlord's Application for Dispute Resolution by Direct Request for an Order of Possession and Monetary Order for unpaid Rent. The landlord subsequently filed an Amendment to an Application for Dispute Resolution seeking to increase the monetary claim to include loss of rent for June and July 2018.

Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I explored service of hearing documents with the parties. The landlord had sent the Application for Dispute Resolution by Direct Request to the tenant by registered mail on May 31, 2018, which the tenant received. The Notice of Dispute Resolution Proceeding and Interim Decision were sent to the tenant via registered mail on June 8, 2018; however, the registered mail was unclaimed and returned to sender. The landlord sent her Amendment to the tenant on July 3, 2018, which the tenant received. The landlord had provided the registered mail receipts, including tracking numbers, as proof of service. I was satisfied the landlord met her obligation to serve the tenant with the hearing documents in a manner that complies with the Act even if the registered mail of June 8, 2018 was not picked up by the tenant pursuant to the deeming provision of section 90 of the Act. Considering the tenant did not receive the package sent on June 8, 2018 I confirmed with the tenant that she was aware that the landlord was seeking to end the tenancy due to unpaid rent. Accordingly, I was satisfied that the tenant was not unduly prejudiced by proceeding with this hearing.

After both parties had an opportunity to be heard, the parties turned their minds to resolving this dispute by way of a mutual agreement. A mutual agreement was reached during the hearing and I have recorded the terms of agreement by way of this decision and the Orders that accompany it.

Issue(s) to be Decided

What are the terms of the mutual agreement?

Background and Evidence

Both parties agreed to the following terms in resolution of this dispute:

1. The 2 Month Notice to End Tenancy and the 10 Day Notice to End Tenancy that have been served upon the tenant are withdrawn and the tenancy shall end by mutual agreement, as described in the terms that follow.
2. The tenancy shall end no later than August 31, 2018 provided the tenant compensate the landlord \$4,200.00 for rent that has not been paid for the months of April, May and June 2018. The landlord waives any entitlement to receive rent from the tenant for the months of July 2018 and August 31, 2018 as part of this mutual agreement. The landlord is provided an Order of Possession effective August 31, 2018 that may be served and enforced in any circumstance.
3. The sum of \$4,200.00 shall be satisfied by way of the landlord retaining the tenant's \$675.00 security deposit and \$200.00 pet deposit and the balance of \$3,325.00 shall be paid to the landlord by e-transfer. The tenant shall make efforts to pay the balance of \$3,325.00 in one payment in the days that follow this hearing; however, if she is unable to pay do so the tenant must pay at least one-half of the balance owing (\$1,662.50) no later than August 3, 2018 and the other half of the balance owing (\$1,662.50) no later than August 17, 2018. The landlord is authorized to retain the tenant's deposits and is provided a Monetary Order for the balance of \$3,325.00 to serve and enforce upon the tenant in the event the tenant fails to meet these payment obligation(s).
4. Should the tenant fail to at least pay the partial payments of \$1,662.50 on August 3, 2018 or August 17, 2018 as described in term number 3, the tenancy will come to an end immediately and the landlord may serve and enforce the conditional Order of Possession that is provided to the landlord with this decision. The conditional Order of Possession shall be effective two (2) days after service upon the tenant.

As a matter of record, the landlord's lawyer requested that the tenant notify him, by email, when she makes a payment to the landlord. The tenant indicated that she had recorded the lawyer's email address and would notify him of payments made.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the agreement in the form of a decision or order.

I have accepted and recorded the mutual agreement reached by the parties during this hearing and I make the term(s) an Order to be binding upon both parties.

In recognition of the mutual agreement, I provide the landlord with the following orders with this decision:

- An Order of Possession with an effective date of August 31, 2018 that may be served at any time and in any circumstance.
- A Monetary Order in the amount of \$3,325.00 that may be served and enforced upon the tenant if she fails to meet her payment obligations as set out in term number 3 of the agreement.
- A conditional Order of Possession with an effective date of two (2) days after service that may only be served and enforced if the tenant fails to meet the minimum payment obligations as set out in term number 3 of the agreement.

For added certainty, the landlord is authorized to retain the tenant's security deposit and pet damage deposit by way of this decision.

The tenant is encouraged to email the landlord's lawyer upon making payment in satisfaction of the mutual agreement.

Conclusion

The parties resolved this dispute by way of a mutual agreement that I have recorded by way of this decision. In recognition of the mutual agreement, I have provided an Order of Possession and Monetary Order to the landlord, as well as a conditional Order of Possession to serve and enforce in certain circumstances as set out in this decision.

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: July 25, 2018

Residential Tenancy Branch