



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence in person. Neither party raised any issues with service. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served and are deemed served as per section 90 of the Act.

At the outset, the landlord confirmed that an amendment was filed increasing the monetary claim from \$950.00 to \$2,850.00 to include unpaid rent for the period August 2018, September 2018 and October 2018 (@\$950.00 per month). The tenant confirmed receipt of this package and raised no issues.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that this tenancy began on April 1, 2017 on a month-to-month basis as per a verbally made tenancy agreement. The monthly rent is \$950.00.

The landlord claims that rent is due on the 1st day of each month whereas the tenant disputed this claim stating that rent is due on the 8th day of each month.

Both parties confirmed that the landlord served the tenant with a 10 Day Notice to end Tenancy for Unpaid Rent (the 10 Day Notice) on August 21, 2018 by posting it to the rental unit door. The 10 Day Notice sets out that the tenant failed to pay rent of \$950.00 that was due on August 8, 2018. The 10 Day Notice also displays an effective end of tenancy date of September 1, 2018.

The landlord was unable to provide an explanation as to why the 10 Day Notice provides for a monthly rent due on August 8, 2018 when she claimed that rent is always due on the 1st of each month.

The landlord claims that the tenant has failed to pay rent of \$2,850.00 for the 3 month period August to October 2018 at \$950.00 per month. The tenant confirmed as of the date of this hearing, the landlord has not received the rent for the 3 month period.

The tenant claimed that the landlord has repeatedly refused to accept rent and has submitted copies of text messages sent by the landlord as well as a handwritten notice of a rent increase dated July 4 increasing the rent from \$950.00 to \$1,300.00. The landlord disputed the tenant's claim. A review of the "Text for Aug Rent" was relied upon by the tenant as proof that attempts at paying rent were made, but refused or ignored by the landlord. The text message states in part,

Hi I send you the rent cheque for August 2018 trough my wife but you refused to receive it If you have any issue Let me know Thanks.

[Reproduced as written]

The tenant also argued that the landlord had attempted to illegally increase the rent contrary to the Act. The landlord has argued that the tenant is not trustworthy or providing accurate information. The tenant has submitted a copy of a hand written notice dated July 4th referring to a conversation in April and June increasing the rent from \$950.00 to \$1,300.00. It states in part,

As per our conversation in April and June, the rent will be increased from \$950 to \$1300. In this area, that is the going rate. If you do not agree, we have family willing to move in.

[Reproduced as written]

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the evidence of both parties and find that the landlord did serve the tenant with the 10 Day Notice by posting it to the rental unit door on August 21, 2018. In this case, the tenant argued that the landlord has refused to accept payment of rent on multiple attempts. The landlord has disputed this claim. The tenant has submitted in support of the claim a copy of text messages sent to the landlord notifying the landlord of the attempt at rent payment and the inquiry as to if there is any issue in accepting rent. The tenant has submitted in support of the claim further text messages. The tenant also noted that the landlord attempted at increasing the rent illegally.

I find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord. In this case, the landlord has provided inconsistent and conflicting testimony that leads me to question her credibility. The landlord provided evidence that rent was due on the 1st day of each month, but was contradicted in the 10 Day Notice served to the tenant on August 21, 2018 which stated that rent was due on the 8th day of each month. The landlord was unable to provide any sort of logical explanation. The landlord also failed to address the tenant's claim that rent was refused other than to state that it was false. On this basis, I find that the landlord has failed to establish a claim to end the tenancy based upon the 10 Day Notice. The landlord's request for an order of possession is dismissed. The 10 Day Notice served on August 21, 2018 is set aside. The tenancy shall continue.

As for the monetary claim of \$2,850.00 for unpaid rent over the 3 month period (August, September and October of 2018), both parties have confirmed that rent was not paid for this period for \$2,850.00. Both parties confirmed that monthly rent of \$950.00 is payable. As such, I find that the landlord has established a claim for unpaid rent of \$2,850.00.

The landlord having been only partially successful is entitled to a partial recovery of the \$100.00 filing fee of \$50.00.

Conclusion

The landlord is granted a monetary order for \$2,900.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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: October 22, 2018

Residential Tenancy Branch