



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, OPC, MNSD, FFL, CNR, OLC, PSF, FFT

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* ("the Act").

On September 10, 2018, the Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. The Tenant also applied for an order for the Landlord to comply with the Act and for the Landlord to provide services and facilities required by law.

On September 18, 2018, the Landlord applied for an order of possession for the rental unit based on the issuance of a 1 Month Notice to End Tenancy for Cause and the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord also applied for a monetary order for unpaid rent and to keep the security deposit and pet damage deposit in full or partial satisfaction of the claim.

The matter was set for a conference call hearing. The Landlord attended the hearing; however, the Tenant did not. The Landlord testified that the Tenant was served with the Notice of Dispute Resolution Proceeding using registered mail sent on September 28, 2018. The Landlord provided the registered mail tracking information as proof of service.

I find that The Tenant was served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the Act.

The Landlord was provided with the opportunity to present affirmed oral testimony and to make submissions during 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.

Preliminary and Procedural Matters

The Tenant applied to dispute a 10 Day Notice to End Tenancy For Unpaid Rent and failed to attend the hearing. The matter was set for hearing by telephone conference call at 11:00 AM on this date. The line remained open while the phone system was monitored for eighteen minutes and the Tenant failed to attend the hearing during this time. Therefore, as the Applicant did not attend the hearing by 11:18 AM, I dismiss the Tenant's application to cancel the 10 Day Notice.

The hearing proceeded based on the Landlord's applications.

Issues to be Decided

- Does the Landlord have reason to end the tenancy based on issuance of a 10 Day Notice to End Tenancy for Unpaid Rent?
- Is the Landlord entitled to an order of possession for the rental unit?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Can the Landlord keep the security deposit and pet damage deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fees?

Background and Evidence

The Landlord testified that the tenancy began on February 1, 2018. Rent in the amount of \$2,000.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00.

10 Day Notice

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 6, 2018. The Landlord testified that the 10 Day Notice was posted on the Tenant's door. The Notice indicates the Tenant has failed to pay rent of \$2,000.00 that was due by September 1, 2018.

The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Tenants disputed the 1 Month Notice on September 10, 2018, within the required timeframe but failed to attend the hearing.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement within 5 days of receiving of the 10 Day Notice. The Landlord is requesting an order of possession for the rental unit.

The Landlord testified that the Tenant has not paid the rent for September 2018, and October 2018. The Landlord testified that the Tenant is still living in the rental unit.

The Landlord requested that the application be amended to include the unpaid October 2018 rent.

The Landlord is looking to keep the security deposit of \$1,000.00 and the pet damage deposit of \$1,000.00 in partial satisfaction of the claim for unpaid rent.

Analysis

1 Month Notice

Based on the evidence and testimony of the Landlord, and on a balance of probabilities, I make the following findings:

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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 find that the Tenant failed to pay the rent due under the tenancy agreement within 5 days of receiving the 10 Day Notice. I find that the Tenant did not have a legal right to withhold payment of the rent.

Pursuant to sections 46 and 55 of the Act, I find that the Landlord is entitled to an order of possession for the rental unit effective 2 (two) days, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Unpaid Rent

I find that the Tenant has failed to pay the rent owing under the tenancy agreement for the months of September 2018, and October 2018. I allow the Landlord's request to amend the application to include October 2018, rent. The Tenant is still living in the rental unit and is aware that rent is due each month. The Landlord has suffered an additional loss of October 2018, rent.

I find that the Tenant owes the Landlord \$4,000.00 for unpaid rent. I authorize the Landlord to keep the security deposit of \$1,000.00 and the pet damage deposit of \$1,000.00 in partial satisfaction of the unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord was successful with the application. I order the Tenant to repay the \$100.00 that the Landlord paid for the hearing. I find that the Landlord applied twice

on the same day and paid two filing fees. I find that the Landlord could have amended the application rather than pay an additional filing fee. I find that it is not reasonable to recover the additional \$100.00 fee from the Tenant.

The Landlord has established a monetary claim of \$4,100.00. After setting off the security deposit and pet damage deposit towards the unpaid rent and filing fee of \$4,100.00, I find that the Landlord is owed a balance of \$2,100.00. I grant the Landlord a monetary order in the amount of \$2,100.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Since the tenancy is ending based on non-payment of rent; there is no need to consider the merits of the 1 Month Notice To End Tenancy For Cause dated September 4, 2018.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement within 5 days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 1, 2018.

The Landlord is granted an order of possession effective 2 days after service on the Tenant

The Landlord is granted a monetary order in the amount of \$ \$2,100.00 for unpaid rent.

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 26, 2018

Residential Tenancy Branch